रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

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सं. 49] नई दिल्ली, दिसम्बर 4—दिसम्बर 10, 2022, शनिवार/ अग्रहायण 13—अग्रहायण 19, 1944
No. 49] NEW DELHI, DECEMBER 4—DECEMBER 10, 2022, SATURDAY/AGRAHAYANA 13— AGRAHAYANA 19, 1944

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय
(राजस्व विभाग)

(केन्द्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड)

नई दिल्ली, 2 दिसंबर, 2022

का.आ. 1266.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में राजस्व विभाग के अधीन, निम्नलिखित कार्यालय जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:

1. केन्द्रीय वस्तु एवं सेवाकर मंडल- भावनगर-2, प्लॉट नं.-09, द्वितीय मंजिल, सिल्वर आर्क बिल्डिंग वाघावाड़ी रोड, भावनगर
2. केन्द्रीय माल एवं सेवाकर लेखा परीक्षा, चंडीगढ़, केन्द्रीय राजस्व भवन, प्लॉट नं. 19, सेक्टर 17-सी, चंडीगढ़-160017
3. सीमाशुल्क (निवारक) आयुक्त का कार्यालय, पाँचवीं मंजिल, कैथॉलिक सेंटर, ब्रॉडवे, कोचिन- 682031

[फा. सं. ई-11017/3/2017- हिन्दी-2 डीओआर]

नीहारिका सिंह, निदेशक (राजभाषा)

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

New Delhi, the 2nd December, 2022

S.O. 1266.—In pursuance of sub rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government, hereby notifies, the following offices under Department of revenue where more than 80% staff have acquired the working knowledge of Hindi:

1. Central Goods and Services Tax Circle-Bhawnagar-2, Plot No.-09, 2nd Floor, Silver Arch Building Waghwadi Road, Bhawnagar
2. Central Goods and Services Tax Audit, Chandigarh, Kendriya Rajasva Bhawan, Plot no. 19, Sector 17-C, Chandigarh-160017
3. Office of the Commissioner of Customs (Preventive), 5th Floor, Catholic Centre, Broadway, Cochin- 682031

[F. N. E-11017/3/2017- Hindi-2 DOR]

NIHARIKA SINGH, Director (OL)

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 7 दिसम्बर, 2022

का. आ. 1267.—राष्ट्रीय कृषि और ग्रामीण विकास बैंक अधिनियम, 1981 (1981 का 61) की धारा 6 की उप-धारा (2) और धारा 7 की उप-धारा (1) के साथ पठित धारा 6 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, राष्ट्रीय कृषि और ग्रामीण विकास बैंक के उप-प्रबंध निदेशक श्री शाजी के. वी. (जन्म तिथि: 30.5.1970) को पद का कार्यभार ग्रहण करने की तारीख से पांच वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, राष्ट्रीय कृषि और ग्रामीण विकास बैंक (नाबार्ड) में अध्यक्ष के पद पर नियुक्त करती है।

[फा. सं. 7/2/2022-एसी]

प्रशांत कुमार गोयल, निदेशक

(DEPARTMENT OF FINANCIAL SERVICES)

New Delhi, the 7th December, 2022

S.O. 1267.—In exercise of the powers conferred by clause (a) of sub-section (1) of Section 6 read with sub-section (2) thereof and sub-section (1) of Section 7 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981), the Central Government hereby appoints Shri Shaji K.V. (DoB: 30.05.1970), Deputy Managing Director, National Bank for Agriculture and Rural Development (NABARD) as Chairman, NABARD for a period of five years with effect from the taking over charge of the post or until further orders, whichever is earlier.

[F. No. 7/2/2022-AC]

PRASHANT KUMAR GOYAL, Director

रेल मंत्रालय

(रेलवे बोर्ड)

नई दिल्ली, 30 नवम्बर, 2022

का. आ. 1268.—रेल मंत्रालय (रेलवे बोर्ड), राजभाषा नियम 1976 (संघ के शासकीय प्रयोजनों के लिए प्रयोग) के नियम 10 के उपनियम (2) और (4) के अनुसरण में निम्नलिखित कार्यालयों जहां 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतदद्वारा अधिसूचित करता है:-

1. **सातवीं वाहिनी, रेलवे सुरक्षा विशेष बल, मौला-अली, हैदराबाद-40.**
2. **मुख्य परियोजना निदेशक कार्यालय, केंद्रीय रेल विद्युतीकरण संगठन, दानापुर, पटना-801105.**

3. मुख्य परियोजना निदेशक कार्यालय, केंद्रीय रेल विद्युतीकरण संगठन, जयपुर, राजस्थान-302006.

4. डेडीकेटेड फ्रेट कॉरिडोर कॉर्पोरेशन ऑफ इंडिया लिमिटेड, मेरठ यूनिट- 250002.

[फा. सं. हिंदी-2018/रा.भा.-1/12/1/(1314710)]

डॉ. बरुण कुमार, निदेशक, राजभाषा

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

New Delhi, the 30th November, 2022

S.O. 1268.—Ministry of Railways (Railway Board) in pursuance of Sub Rule (2) and (4) of Rule 10 of the Official Language Rules, 1976 (use for the Official purposes of the Union) hereby, notify the following offices where 80% or more Officers/ Employees have acquired the working knowledge of Hindi:-

1. **7th Battalion, Railway Protection Special Force, Maula-Ali, Hydrabad-40.**
2. **Chief Project Director office, Central Organisation for Railway Electrification, Danapur, Patna-801105.**
3. **Chief Project Director office, Central Organisation for Railway Electrification, Jaipur, Rajasthan-302006.**
4. **Dedicated Freight Corridor Corporation of India Ltd, Meerut Unit- 250002.**

[F. No. Hindi-2018/O.L-1/12/1/(1314710)]

Dr. BARUN KUMAR, Director (O.L.)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 27 सितम्बर, 2022

का.आ. 1269.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं 2, चंडीगढ़ के पंचाट (संदर्भ सं. 38/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/09/2022 को प्राप्त हुआ था।

[सं. एल.22013/01/2022.आई.आर (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 27th September, 2022

S.O. 1269.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2020) of the Central Government Industrial Tribunal-cum-Labour Court NO. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 07/09/2022

[No. L-22013/01/2022 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. S.K. Thakur, Presiding Officer.

ID No. 38/2020

Registered on:-24.08.2020

Sh. Kartar Singh S/o Sh. Basant Singh Village-Bard, Post Office-Suhani Tehsil-Ghurmariwan Distt. Bilaspur H.P

.....Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160019.

2. The Chief Engineer, Bhakra Beas Management Board, BSL Project, Sundernagar-175038.

.....Respondents/Managements

Award

Passed On:- 31.05.2022

Central Government vide Notification No.ID-(17) 2019/B-IV/CHD dated 14.08.2020, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal.

"Whether the action of the management of BBMB in not accepting the demand of Sh. Kartar Singh S/o Sh. Basant Singh for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?

1. On receipt of the above reference notice was sent to the workman side as well as to the respondents/managements. The postal article sent to the workman, referred above, is deemed to have been delivered to the workman side as the same has not been returned undelivered.

2. Workman has been given sufficient opportunities to file claim statement but, till date the workman has not been able to file claim even none turned up on the dates of hearing in spite of several opportunities afforded to file claim statement. This shows that the workman is not interested in adjudication of the matter on merit.

3. Since the workman has neither put his appearance nor he has filed statement of claim to prove his cause against the respondents/managements. As such this Tribunal is left with no alternative except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the instant reference ID No.38/2020.

4 Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

S.K. THAKUR, Presiding Officer,

नई दिल्ली, 27 सितम्बर, 2022

का.आ. 1270.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं 2, चंडीगढ़ के पंचाट (संदर्भ सं. 50/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/09/2022 को प्राप्त हुआ था।

[सं. एल. 22013/01/2022.आई.आर (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th September, 2022

S.O. 1270.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2020) of the Central Government Industrial Tribunal-cum-Labour Court NO. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 07/09/2022

[No. L-22013/01/2022–IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. S.K. Thakur, Presiding Officer.

ID No. 50/2020

Registered on:-24.08.2020

Sh. Dharam Singh S/o Sh. Sunder Singh Village & Post Office-Gangloh Tehsil-Jhanjutta Distt. Bilaspur H.P.

.....Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160019.
2. The Chief Engineer, Bhakra Beas Management Board, BSL Project, Sundernagar-175038.

.....Respondents/Managements

Award

Passed On:- 25.05.2022

Central Government vide Notification No.ID(16)2019/B-IV/CHD, dated 14/08/2020, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal.

> **"Whether the action of the management of BBMB is not accepting the demand of Sh. Dharam Singh S/o Sh. Sunder Singh for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?**

1. The Ministry of Labour & Employment, Government of India while referring the above Industrial Dispute for adjudication also directed the following:-

"The parties raising the dispute shall file a statement of claim complete within relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such a statement to each of the opposite parties involved in this dispute under rule 10(B) of the Industrial dispute (Central), Rules, 1957".

2. However, no claim statement was filed by the workman within the stipulated period. Despite the directions of the Central Government not complied by the workman opportunity was provided to the workman and, therefore, on receipt of the above reference notice was sent to the workman as well as to the respondents/managements for appearances for adjudication. The postal article sent to the workman, referred above, is deemed to have been served on the parties under dispute as the post sent has not been received back as undelivered.

3. Workman has been given sufficient opportunities to file claim statement but none turned up in spite of several opportunities afforded to file claim statement. This shows that the workman is not interested in adjudication of the matter on merit.

4. Since the workman has neither put his appearance nor he has filed statement of claim to prove his cause against the respondents/managements. As such this Tribunal is left with no alternative except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the instant reference ID No.50/2020.

5. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

S.K. THAKUR, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2022

का.आ. 1271.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ सं. 18/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/09/2022 को प्राप्त हुआ था।

[सं. एल. 22013/01/2022-आई.आर (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th September, 2022

S.O. 1271.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.18/2020) of the Central Government Industrial Tribunal-cum-Labour Court NO. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 07/09/2022

[No L-22013/01/2022 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. S.K. Thakur, Presiding Officer.

ID No.18/2020

Registered on:-02.07.2020

Smt. Mansa Devi Wd/o Late Sh. Ram Lal Village-Ratkel, P.O. Sajaopiplu, Tehsil-Dharampur, Distt. Mandi, Himachal Pradesh

.....Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160019.
2. The Chief Engineer, Bhakra Beas Management Board, BSL Project, Sundernagar-175038.

.....Respondents/Managements

AWARD

Passed On:- 31.05.2022

Central Government vide Notification No.ID-8(6)2020/B-IV/CHD dated 01.07.2020, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal.

"**Whether the action of the management of BBMB in not accepting the demand of Smt. Mansa Devi Wd/o Late Sh. Ram Lal for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?**

1. On receipt of the above reference notice was sent to the workman side as well as to the respondents/managements. The postal article sent to the workman, referred above, is deemed to have been delivered to the workman side as the same has not been returned undelivered.
2. Workman side has been given sufficient opportunities to file claim statement but, till date the workman has not been able to file claim even none turned up on the dates of hearing in spite of several opportunities afforded to file claim statement. This shows that the workman is not interested in adjudication of the matter on merit.
3. Since the workman has neither put his appearance nor he has filed statement of claim to prove his cause against the respondents/managements. As such this Tribunal is left with no alternative except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the instant reference ID No.18/2020.
4. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

S.K. THAKUR, Presiding Officer,

नई दिल्ली, 8 दिसम्बर, 2022

का.आ. 1272.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बिलासपुर रायपुर क्षत्रिय ग्रामीण बैंक प्रबंध तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट **औद्योगिक** विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ सं. 93/2009) को प्रकाशित करती है ।

[सं. एल- 12012/217/2002-आई आर बी-1]

ए. के. यादव, अवर सचिव

New Delhi, the 8th December, 2022

S.O. 1272.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 93/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bilaspur Raipur Kshetriya Gramin Bank and their workmen

[No. L-12012/217/2002– IR(B-1)]

A. K YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, JABALPUR

NO. CGIT/LC/R/93/2009

Present: P.K.Srivastava H.J.S..(Retd)

Shri Ashok Kumar Yadav
Village & Post Pawni(City Para
Tehsil Bilaigarh, District Raipur ... Workman

Versus

The Chairman
Bilaspur Raipur Kshetriya Gramin Bank
(modified as) Chhattisgarh Gramin Bank
Bilaspur (C.G.)

The Chairman
Bilaspur Raipur Kshetriya Gramin Bank
(Modified as) Chhattisgarh Gramin Bank (MP)
Bilaspur. ... Management

AWARD

(Passed on 30-8-22)

As per letter dated 30/10/2009 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/217/2002(IR(B-1).The dispute under reference relates to:

> *"Whether the action of the management of Bilaspur(Raipur)Kshetriya Gramin Bank in terminating the services of Shri Ashok Kumar Yadav S/o Shri Badlu Ram w.e.f. 24-3-2001 is justified?If not , what relief the applicant is entitled? ."*

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defence.

The case of the workman as stated in his statement of claim is that he was appointed against permanent vacancy of undersigned in Pawni Branch of the Management Bank. The then Bilaspur Raipur Kshetriya Gramin Bank on 6-3-1991. He worked there till 24-3-2001 continuously for 240 days and more in every year including the year preceding the date of his termination i.e. 24-3-2001. The Bilaspur Raipur Kshetriya Gramin Bank merged into Chhattisgarh Gramin Bank, Bilaspur on 30-6-2006. According to the workman, he was not given any notice nor was paid any compensation, hence his termination is in violation of Section 25G and Section 25F of the Industrial Disputes Act,1947, herein after referred to as the word "Act". This is also the case of the workman that his termination is in violation of Section 25N of the Act and Rule 76 of Industrial Dispute Rules. Accordingly, he has prayed that holding his termination bad in law, he be entitled to be reinstated with back wages and benefits. The case of the Management is mainly that the applicant is not a workman as defined under Section 2(s) of the Act. He was never appointed as per Rules against any permanent vacancy as claimed by him, rather he was engaged as a Daily Wager casual worker by the Bank and was paid on daily basis when ever he was engaged according to work. The Management has denied the claim of the workman that he worked for 245 days or more continuously in any year before his termination. According to the Management, his termination is not bad in law. The management has accordingly requested that the reference be answered against the workman.

2. During the proceedings, the workman absented himself. He did not lead any oral or documentary evidence. The Management has filed affidavit of its witness Panchram Armo, Branch Manager.

3. The workman did not appear at the time of arguments also. He did not file any written arguments.

4. I have heard arguments of Shri A.K.Shashi, learned counsel for the Management and have gone through the record.

5. **The Reference itself is the issue for determination in the case in hand.**

6. The initial burden to prove his claim lies on the workman, in absence of any evidence oral or documentary, it is held that the workman could not prove his continuous engagement as defined under Section 25B of the Act. Hence his termination cannot be held bad in law. Accordingly, holding the action of management in terminating the services of the workman justified in law and fact, the workman is held entitled to no relief.

7. On the basis of the above discussion, following award is passed:-

A. The action of the management of Bilaspur(Raipur)Kshetriya Gramin Bank in terminating the services of Shri Ashok Kumar Yadav S/o Shri Badlu Ram w.e.f. 24-3-2001 is held to be justified.

B. The workman is held entitled to no relief.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 30-8-2022

नई दिल्ली, 8 दिसम्बर, 2022

का.आ. 1273.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे प्रबंध तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट संदर्भ संख्या (5/2018) को प्रकाशित करती है।

[सं. एल. 41012/23/2017-आई आर बी.1]

ए. के. यादव, अवर सचिव

New Delhi, the 8th December, 2022

S.O. 1273.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.5/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen

[No. L-41012/23/2017– IR(B-1)]

A.K YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/5/2018

Present: P.K.Srivastava H.J.S..(Retd)

Shri Meherban Singh,
Aatmaj Mangal Niwasi Saalichowka,
Baabaikala Ward No.5
Basuriya Ward,
Tehsil Gadarwavada Zilla
Narsinghpur(M.P.) .... Workman

Versus

The Divisional Railway Manager,
Western Railway,
Jabalpur(M.P.) ... Management

AWARD

(Passed on 20-7-2022.)

As per letter dated 24/1/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/23/2017(IR(B-1). The dispute under reference relates to:

> "**Kya mandal rail prabhandak, pachim Madhya rail, Jabvalpur M.P. ke prabhandan dwara Shri Mehrban Singh Atmaj Mangal Bhutpurv Gangman ke sweayein denank 18-8-1989 se samapt kiye jaane ke karyavahi nyayuchhit hai?yadi nahi to sambhandit karmachari kes anutosh na haqdar hai? .**"

1. After registering the case on the basis of reference, notices were sent to the parties. The workman never appeared inspite of service of notice. He did not even file statement of claim.

2. The Management has filed the written statement of defence, wherein it has been pleaded that the workman was removed from service on 18-8-1989 and he raised the dispute before the Conciliation Officer in the year 2017, after 28 years from the date of his removal. Thus his claim is barred by delays and latches. It has further been pleaded that the workman was impleaded as Gangman in P.W.I. Bagratawa initially as casual labour in 1969. He was regularized in service in the year 1971. He has been a habitual absentee and absented himself unauthorizedly without any intimation or leave sanctioned on many occasion. He was left off from charges by imposing lesser punishment. He absented himself willfully and unauthorisedly without any leave or sanction from 6-10-1987 for which he was issued a charge sheet on 16-6-1988. He was served with a notice asking him to file reply to the chargesheet but he did not file any reply. A Departmental inquiry was ordered. The workman appeared and participated during the inquiry. He admitted his absence. Also he admitted that he did not report to any of the Railway Doctor nor sent intimation to P.W.I. The Inquiry Officer submitted his report holding the charges proved. The Disciplinary Authroity passed the impugned punishment of removal from service w.e.f. 18-8-1989.

3. Since the workman never appeared, the reference proceeded ex-parte against him. The Management filed affidavit of its witness with photocopy of inquiry papers.

4. I have heard ex-parte argument of ShriA.K.Shashi, Learned Counsel for the Management and have perused the record.

5. **The Reference is the issue for determination, in the case in hand**.

6. The initial burden to prove his claim lies on the workman. In the case in hand, the workman never appeared. He never filed any statement of claim to show what his case was. He never filed any oral or documentary evidence in support, hence he has held to have failed to discharge this initial burden. On the other hand, the Management witness has corroborated the case of the management in his affidavit filed as Examination-in-Chief and has proved the inquiry papers. Perusal of the inquiry papers shows that principles of natural justice were followed. The workman did participate during the inquiry, hence inquiry cannot be held against law or fact. Secondly the act of willful and unauthorized absence is also proved from the inquiry papers. Willful and unauthorized absence is misconduct inviting major punishment of removal, hence the punishment also cannot be said to be excessive to the charge. Moreover the dispute has been first raised after 28 years of cause of action. The management has relied on judgment of Hon'ble the Apex Court in the case of **Assistant Executive Engineer Vs. Shivalinga** (2002) I.LL.J S.C.457. "On this point, Hon'ble the Apex Court has held the claim to be barred by latches when it was filed with unexplained delay of nine years." This judgment of Hon'ble the Apex Court has been followed by Hon'ble Bombay High Court, Nagpur Bench in W.P.No.6232/2014 (**W.C.L.Durgapur Vs. Union of India & Another**) referred to from the side of the management.

7. In the light of above discussion, holding the action of management justified in law and facts, the reference deserves to be answered against the workman.

8. On the basis of the above discussion, following award is passed:-

A.The action of the management as mentioned in the reference is legal and proper.

B.The workman is held entitled to no relief.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 30-8-2022

नई दिल्ली, 8 दिसम्बर, 2022

का.आ. 1274.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पष्चिम मध्य रेलवे प्रबंध तंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ सं. 48/2014) को प्रकाशित करती है !

[सं. एल-41012/10/2014- आई आर बी-1]

ए. के. यादव, अवर सचिव

New Delhi, the 8th December, 2022

S.O. 1274.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 48/2014) of the Cent. Govt.I ndus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of West Central Railway and their workmen.

[No. L-41012/10/2014– IR(B-1)

A.K YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/48/2014

Present: P.K.Srivastava H.J.S..(Retd)

Shri Ram Narayan Malviya
S/o Nanakram,
H.No.9, Bhagat singh Nagar,
Ward No.22,Yard Road,
Near Gwalior Baba Itarsi(MP) ....Workman

Versus

The Divisional Railway Manager,
West Central Railway,
Habibganj,
Bhopal(M.P.) ...Management

AWARD

(Passed on this 17-10-2022.)

As per letter dated 30/5/2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.l-41012/10/2014-IR(B-1) The dispute under reference relates to:

> "**Whether the action of the management OF Sr. DME(TRS), Electric Locoshed, Itarsi in terminating the services of Shri Ram Narayan Malviya from 23-9-05 from the post of Chowkidar, Vandana Bhawan, Itarsi is justified or not?if not, to what .**"

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The case of the workman as stated in his statement of claim is that he was appointed as a Chowkidar on 15-5-1996 on daily wages of Rs.250/-. He was posted at the Vandana Smriti Hall new Yard Itarsi. He worked till 23-9-2005 when his services were terminated without any notice or compensation which is against Industrial Disputes Act,1947. Accordingly he has prayed that he be reinstated with back wages and benefits.

3. The case of the management is mainly that he was deputed as a chowkidar on daily wages at Vandana Smriti Hall who has no connection with the Management of Railways. It is run by an autonomous body and self governed body of Railway employees and works for their welfare. This Committee which runs this Vandana Smriti Hall engaged the workman as chowkidar on daily wages and removed him from services when his services were found unsatisfactory. Hence there was never an employer employee relationship

between him and the management of Railways. Hence there is no question of termination of his services by Railways. Accordingly the Management has prayed that the reference be answered against the workman.

4. The workman has filed copy of his appointment letter dated 17-5-1996 , copy of removal order dated 23-9-2005, copy of order of Hon'ble High Court in W.P.No.20762/2012. Copies of various orders issued by the Divisional Engineer, loco shed being member of Board of Vandana Smriti Hall regarding allotment of hall to different railway employees for different purposes on different dates, all admitted by Management, hence marked as Exhibit W1 to W7. The workman has examined himself and has been examined by Management.

5. The Management has examined its witness Aditya Legha and P.K.Ingla who has been cross-examined by the workman.

6. I have heard arguments of Shri Ashok Shrivastav, learned counsel for the workman and Shri Gulab Suhane, learned counsel for Management and have gone through the record.

7. On perusal of the record in the light of rival arguments, the following issues arises for consideration:-

1) Whether there is relationship of workman and employer between the parties i.e. the applicant workman and management of Railways?"

8. Section 2G and Section 2S define employer and workman in Industrial Disputes Act,1947 which is as follows:-

Section 2(S)-

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) **who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or**

(ii) **who is employed in the police service or as an officer or other employee of a prison, or**

(iii) **who is employed mainly in a managerial or administrative capacity, or**

(iv) **who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]**

(*g*) "employer" means,—

(*i*) in relation to an industry carried on by or under the authority of any department of [the Central Government or a State Government], the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(*ii*) in relation to an industry carried on by or on behalf of a local authority, the chiefexecutive officer of that authority;

9. Pleading of parties have been dealt on this point earlier. Admitted is the fact that the workman was issued appointment to work as a chowkidar at Vandana Smriti Hall and was removed by Vandana Smriti Hall official. The management of Railways has filed the bye laws of Vandana Smriti Hall which is Exhibit M-3 which states that the name of the building will be Vandana Community Bhawan . It also provides that there will be a Management Committee to manage the affairs of this building and also provides rules regarding its maintenance and use. It is established from perusal of these Rules that Vandana Smriti Hall Committee is a body distinct from Management of Railway that it is constituted for welfare of Railway employees and some Railway officials who are on its Board. Since this Committee is distinct from Railways and the workman was appointed by this Committee, there cannot be said to be any relation of employer and workman between the parties in the case in hand. Hence the fact that the workman was determined by Management of Railways is held not proved and the reference deserves to be answered accordingly.

10. On the basis of the above discussion, following award is passed:-

A.The action of the management "OF Sr. DME(TRS), Electric Locoshed, Itarsi in terminating the services of Shri Ram Narayan Malviya from 23-9-05 from the post of Chowkidar, Vandana Bhawan, Itarsi is held to be just and proper.

B.The workman is held entitled to no relief.

C.No order as to costs.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 17-10-2022

नई दिल्ली, 30 नवम्बर, 2022

का.आ. 1275.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक (ओ एंड एम) एनटीपीसी, बिलासपुर (सी.जी.); अपर प्रबंधक और मानव संसाधन (प्रमुख), मैसर्स एरा इंफ्रा इंजीनियरिंग लिमिटेड, नोएडा (यू.पी); परियोजना प्रबंधक, एरा इंफ्रा इंजीनियरिंग लिमिटेड एनटीपीसी, बिलासपुर (सी.जी) के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती सतरूपा, द्वारा अध्यक्ष, छत्तीसगढ़ कर्मचारी मजदूर एकता संघ, बिलासपुर, छत्तीसगढ़,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. CGIT/LC/R/56/2017) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 30/10/2022 को प्राप्त हुआ था।

[सं. एल-42011/20/2017-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th November, 2022

S.O. 1275.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/56/2017) of the Central Government Industrial Tribunal cum Labour–Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager (O & M) NTPC, Bilaspur (C.G.);The Additional Manager & HR (Head), M/s Era Infra Engineering Ltd., Noida (U.P);The Project Manager, Era Infra Engineering Ltd. NTPC, Bilaspur (C.G) and Smt. Satrupa, Through The President, Chhattisgarh Employees Mazdoor Ekta Sangh, Bilaspur, Chhattisgarh, which was received along with soft copy of the award by the Central Government on 30/10/2022.

[No. L- 42011/20/2017-IR(DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM -LABOUR COURT, JABALPUR

NO. CGIT/LC/R/56/2017

Present: P.K.Srivastava H.J.S.(Retd.)

Smt. Satrupa,
C/o Shri Om Prakash Gangotri,
President, Chhattisgarh Kramchari
Mazdoor Ekta Union, Bilaspur,
Chhattisgarh - 495555 .....Workman

Versus

The General Manager (O & M)
NTPC, Seepat PO Ujjawal Nagar,
Bilaspur. C.G. - 495555

The Addl. Manager & HR (Head)
M/s Era Infra Engineering Ltd.
C-56/41, Sector – 62,
Noida UP – 201301.

The Project Manager,
Era Infra Engineering Ltd. NTPC,
Seepat Site, P.O. Ujjawal Nagar
Bilaspur. C.G. - 49555 ... Management

AWARD

(Passed on this 17th day of October-2022)

1. As per letter dated 09/05/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-42011/20/2017 – IR (DU). The dispute under reference relates to:

> **"Whether the action on the part of M/s Era Infra Engineering Ltd, a contractor working under the principal employer at NTPC, Seepat site in terminating the workman namely Smt. Satrupa w/o Shri Samaru and not paying the terminal benefits as espoused by the president of the Chattisgarh Kramchari Mazdoor Ekta Union, Bilaspur is legal and justified as per the provisions of section 25 (F) of ID act? If not, what relief the above named workman is entitled to?**

2. After registering the case on the basis of reference, notices were sent to the parties on addresses' mention in the reference. Workman represented through her learned counsel Adv. Shri S.K.Saini. Management No. 1 & 2 represented through their learned counsel Adv. Shri R.C.Shrivastava and Adv. Shri Pradeep Kumar Pandey respectively. Many dates were given for filling of Statement of Claim. No Statement of Claim was filed. The opposite parties also did not file any Written Statement of Defence.

3. Since the initial burden to prove its case is on the workman side in which she has failed. Hence the reference deserves to be answered against her and is answered accordingly.

4. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 17-10-2022

नई दिल्ली, 2 दिसम्बर, 2022

का.आ. 1276.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एमएमटीसी, नई दिल्ली; प्रोमिनेन्ट हाउस कीपिंग, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और श्री प्रभाकर पोखरियाल, नई दिल्ली के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ सं. 205/2019) को प्रकाशित करती है।

[सं. Z-16025/04/2022-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 2nd December, 2022

S.O. 1276.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 205/2019) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of MMTC, New Delhi; Prominent House Keeping, New Delhi and Shri Prabhakar Pokhriyal, S/o Shri C P Pokhriyal, New Delhi.

[No. Z-16025/04/2022-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 205/2019

Date of Passing Award- 18.11.2022

Between:

Shri Prabhakar Pokhriyal,
S/o Shri C P Pokhriyal,
R/o House No. 36-A, 3rd Floor, Cheema House,
Begampur, Mahavir Nagar, New Delhi-110017 .... Workman

Versus

1. MMTC,
   Scope Complex, Core-I, 7 Industrial Area,
   Lodhi Road, New Delhi-110003 .... Managements

2. Shri Arun D Rosary, CGM, MMTC,
   Scope Complex, Core-I, 7 Industrial Area,
   Lodhi Road, New Delhi-110003.

3. Shri Girish Kumar Bhowal, Manager, MMTC,
   Scope Complex, Core-I, 7 Industrial Area,
   Lodhi Road, New Delhi-110003.

4. Shri Puroshattam Kumar Jha, Care Taker, MMTC,
   Scope Complex, Core-I, 7 Industrial Area,
   Lodhi Road, New Delhi-110003.

5. Prominent House Keeping,
   F-67-68, 1st Floor, Manish Global Mall,
   Dwarka, New Delhi-110077.

Appearances:-

Shri S B Shelly ... For the claimant

(A/R)

None for the management .....For the Management

(A/R)

AWARD

This is an application filed u/s 2A by the claimant Shri Prabhakar Porkhriyal alleging illegal termination of his service by respondent No.5 and advancing a claim of Rs. 272400/- towards unpaid salary etc.

The facts pleaded in short is that the claimant was working as a supervisor under management No.5 i.e Prominent Housekeeping who had deployed his employees for the job of housekeeping in the office of MMTC at Lodhi Road New Delhi. His job was to supervise the work of other persons employed by the contractor prominent Housekeeping to execute the work of housekeeping. Respondent No.1 is the Principal Employer and respondent no.2, 3 and 4 are the lower functionaries of management No.1. The respondent No.2 , 3 and 4 were acting contrary to their responsibility and collecting a share from the remuneration paid to the employees deployed by the contractor. The claimant had raised complaints in this regard with the higher authorities of management No.1. This created a hostile atmosphere around the claimant. Though he was discharging his duty with utmost sincerity, the respondent no.2, 3 and 4 in connivance with respondent No.5 with the sole intention of harassing him transferred him from MMTC Scope Office to the office at Manesar Haryana Gurgaon by letter dated 14.03.2019. The claimant being a physically handicap person and a low paid employee staying in a rented house in Begampur Area New Delhi was unable to commute from Delhi to Manesar daily meeting the travelling expenses. However, the claimant pursuant to the letter dated 14.03.2019 reported at Gurgaon office. But he was not allowed to join there. In the transfer letter dated 14.03.2019 it was mentioned that his service in New Delhi is no more required. For the non acceptance of joining in Gurgaon Office the claimants service stood terminated

w.e.f 14.03.2019. Finding no other way he raised the present dispute praying reinstatement into service and payment of his wage from June 2018 till filing of the claim amounting to Rs. 272400/-. Before filing of this claim the claimant had raised a dispute before the labour commissioner where the conciliation was taken up. But for the adamant attitude of the management the conciliation failed. Hence, this proceeding.

Notice was served on all the managements. Management No.1, 2 ,3 and 4 though appeared and took time for filing WS, later on abandoned the proceeding without filing WS. Management No.5 entered appearance and filed an application praying rejection of the claim petition for the grounds stated therein. Subsequently management No.5 neither filed WS nor moved the application filed for rejection of the claim. Thus, by order dated 27th April 2022 all the four managements were proceeded exparte and the application filed by M5 was rejected as not pressed. Thereafter the claimant filed his affidavit.

In the affidavit the claimant has fully supported the averments made in the claim petition. In addition to that he has filed the photocopies of his ESI Card, the representations made to the authorities and photocopies of the complaint made by the claimant to NHRC and other authorities. He has also filed the copy of the dispute raised before the Labour Commissioner alleging illegal termination of the service and the reply filed by the MMTC to the said complaint. In the said reply the MMTC has denied its liability as the employer of the claimant. However, the management No.5 had not appeared before the Labour Commissioner.

The evidence of the claimant since has not been disputed and the documents filed by him has remained unchallenged and uncontroverted it is concluded that the claimant was subjected to unfair labour practice for the illegal termination of his service without following the procedure of law laid u/s 25F of the Id Act since, the documents filed by the claimant clearly proves that he had worked for more than 240 days in the calendar year preceding the termination of service pursuant to the letter dated 14.03.2019. On that account the claimant is entitled to one month pay amounting to Rs. 13500/- as one month notice pay alongwith the arrear salary of Rs. 272400/- as claimed by him. Hence, ordered.

ORDER

The claim be and the same is answered in favour of the claimant. The management No.5 being the employer of the claimant is directed to pay Rs. 272400/- towards the arrear salary and Rs. 13500/- equal to one month pay in lieu of one month notice to the claimant. This amount shall be paid to the claimant by M5 i.e. Prominent Housekeeping within two months from the date of publication of this award failing which the amount accrued shall carry interest @ 6% per annum from 14.03.2019 and till the payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

शुद्धिपत्र

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1277.—इस मंत्रालय की दिनांक : 15/11/2022 की अधिसुचना सं एल 12012/01/2021 आई आर (बी 1) में है निम्नानुसार संधोन किया जाता है :-

पंक्ति दो (2) मं की गई प्रविष्टियो को अवार्ड "(संदर्भ 28/2001)" के स्थान पर अवार्ड "(संदर्भ 28/2021)" पढा जाए !

[सं. 12012/01/2021- आई आर बी-1]

ए. के. यादव, अवर सचिव

CORRIGENDUM

New Delhi, the 5th December, 2022

S.O. 1277.—This Ministry's Notification No.L-12012/01/2021- IR(B-I) dated 05/12/2022 is amended as under:-

"the entries in line two(2) may be read as "Award(Ref.28/2021" instead of "Award (Ref.28/2001)" .

[No. L-12012/01/2021– IR(B-1]

A.K. YADAV, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

Present: JUSTICE ANIL KUMAR PRESIDING OFFICER

I.D. No. 28/2021

BETWEEN

Renu Sharma W/o Shri Susheel Kumar Sharma
R/o B5/407, Fourth Floor, Nandini Enclave, Phase-3, Avadh Vihar Yojna, Lucknow.

AND

1. The Managing Director & CEO
Axis Bank & Securities Ltd., Axis House
C-2, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai – 400025.

2. The HR Head, Axis Bank & Securities Ltd., Axis House
C-2, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai – 400025.

3. The Vice President, HR, Axis Bank & Securities Ltd., Axis House
C-2, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai – 400025.

4. The JGM (Legal and compliance), Axis Bank & Securities Ltd., Axis House
C-2, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai – 400025.

CORRIGENDUM

1. By award dated 05.08.2022, the complaint filed by the workman-lady, Smt. Renu Sharma W-10, under Section 33 A of the Industrial Disputes Act, 1947 for alleged contravention of the provisions contained in the Section 33 of the Industrial Disputes Act, 1947 by the opposite parties had been disposed of by this Tribunal; wherein some typographical error has been committed on first page of the said award.

2. Therefore, following correction is being incorporated in the award dated 05.08.2022 of this Tribunal:

"The I.D. No. on the first page of award dated 05.08.2022 the industrial dispute number, mentioned as **"28/2001" be read as "28/2021"**.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1278.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री शंकर, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 28/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल- 40012/71/2011 -आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1278.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 28/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in

relation to The General Manager,Bharat Sanchar Nigam Limited, Sector-15, Faridabad,(Haryana), and Shri Shankar, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/71/2011 -IR (DU)

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 28/2012

Date of Passing Award- 19.10.2022

Between:

Shri Shankar,
S/o Shri Heera Lal,
R/o House No. 180, Gali No.1,
Rahul Colony, NIT,
Faridabad .... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad ... Management

Appearances:-

Shri S.P Srivastava ...For the claimant
(A/R)

Shri Deepak Thukral ...For the Management
(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/71/2011 (IR(DU) dated 02/12/2011 to this tribunal for adjudication to the following effect.

"Whether the action of the management of BSNL, in terminating the services of Shri Shankar S/o Shri Heera Lal, Ex-Cable Jointer w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?"

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 05.01.2003. Initially his remuneration per month was Rs. 1700/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 7 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to

him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.

2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.

2. The original board resolution authorizing the person who has signed the WS.

3. Various grade and structure of employee applicable to the BSNL.

4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.

5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.

6. List of licensed contractors working for BSNL in the year 2010.

7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 2003 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Daisy Singh testified as MW1 and also produced some

documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 07 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2003 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 2003 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joinder for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2003 to 2010 proves that the claimant Shankar on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joinder/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172,** he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without in ordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2003 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and**

others (2015)3CLR 363 Delhi High Court to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2003 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 07 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2003 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 07 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

> "Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several

observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more**(2006 SCC page 967, municipal counsel Sujanpur vs. surinder kumar relied)**

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556.** In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

> "32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.
>
> "33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench".

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848,** wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

> "In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while

following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 07 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer.

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1279.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री नेक राम, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 27/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/70/2011-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1279.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager,Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Nek Ram, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/70/2011 -IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 27/2012

Date of Passing Award- 19.10.2022

Between:

Shri Nek Ram,
S/o Shri Lakhan Singh,
R/o House No. 710, Gali No.2,

Parwatia Colony, 30 Feet Road, NIT,
Faridabad .... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad ... Management

Appearances:-

Shri S.P Srivastava ... For the claimant

(A/R)

Shri Deepak Thukral .....For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/70/2011 (IR(DU) dated 02/12/2011 to this tribunal for adjudication to the following effect.

"Whether the action of the management of BSNL, in terminating the services of Shri Nek Ram S/o Shri Lakhan Singh, Ex-Cable Jointer w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?"

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 01.03.1999. Initially his remuneration per month was Rs. 1700/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 11 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The

management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 1999 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Daisy Singh testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 11 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract

Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 1999 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 1999 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joinder for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 1999 to 2010 proves that the claimant Nek Ram on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joinder/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172,** he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of

contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without in ordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 1999 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 1999 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 11 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 1999 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 10 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

"Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more**(2006 SCC page 967, municipal counsel Sujanpur vs. surinder kumar relied)**

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556.** In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

"32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

"33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench".

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848,** wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

"In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 11 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer.

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1280.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राम कुमार, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 11/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल- 40012/64/2011-आईआर(डीयू))]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1280.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad,(Haryana), and Shri Ram Kumar,Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/64/2011 -IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 11/2012

Date of Passing Award- 31.10.2022

Between:

Shri Ram Kumar,
S/o Shri Munau,
R/o House No. 284, Gali No.3, Rahul Colony,
NIT, Faridabad .... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad ... Management

Appearances:-

Shri S.P Srivastava .....For the claimant
(A/R)

Shri Deepak Thukral ..... For the Management
(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/64/2011 (IR(DU) dated 05/12/2011 to this tribunal for adjudication to the following effect.

"Whether the action of the management of BSNL, in terminating the services of Shri Ram Kumar S/o Shri Munau, Ex-Cable Jointer w.e.f

23.08.2010, is legal and justified? What relief the workman is entitled to?"

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 05.06.2003. Initially his remuneration per month was Rs. 1650/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 07 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.

6. List of licensed contractors working for BSNL in the year 2010.

7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 2003 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Daisy Singh testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 07 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he

had worked for BSNL from 2003 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 2003 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joinder for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2003 to 2010 proves that the claimant Ram Kumar on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joinder/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172,** he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without in ordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the

management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2003 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2003 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 07 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The

witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2003 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 07 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

"Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more**(2006 SCC page 967, municipal counsel Sujanpur vs. surinder kumar relied)**

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556.** In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

"32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in

the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

"33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench".

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848,** wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

"In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 07 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1281.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा) ,के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राम पाल,कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 10/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/63/2011-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1281.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad,(Haryana), and Shri Ram Pal,Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/63/2011 -IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 10/2012

Date of Passing Award- 31.10.2022

Between:

Shri Ram Pal,
S/o Shri Mahender Singh,
Parwatia colony, NIT, Faridabad .... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad ... Management

Appearances:-

Shri S.P Srivastava .....For the claimant

(A/R)

Shri Deepak Thukral .....For the Management

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/63/2011 (IR(DU) dated 05.12.2011 to this tribunal for adjudication to the following effect.

"Whether the action of the management of BSNL, in terminating the services of Shri Ram Pal S/o Shri Mahender Singh, Ex-Cable Jointer w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?"

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 04.05.2001. Initially his remuneration per month was Rs. 1600/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 09 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.

4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.

5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.

6. List of licensed contractors working for BSNL in the year 2010.

7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 2001 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Nishi Bhalla testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 09 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2001 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 2001 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joinder for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2001 to 2010 proves that the claimant Ram Pal on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joinder/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172,** he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without in ordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. No. contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2001 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2001 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 09 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his

service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2001 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 09 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

"Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more**(2006 SCC page 967, municipal counsel Sujanpur vs. SURINDER KUMAR relied)**

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma Devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma Devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556.** In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

> "32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in

the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

"33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Uma Devi. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench".

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848,** wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

"In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 09 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer.

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1282.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधतंत्र के संबद्ध

नियोजकों और श्री त्रिलोकी,कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट(संदर्भ संख्या 06/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/59/2011-आईआर (डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1282.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 06/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad,(Haryana), and Shri Triloki ,Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/59/2011 -IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 06/2012

Date of Passing Award- 20.10.2022

Between:

Shri Triloki,
S/o Shri Khedu,
R/o House No. 154, Gali No.1,
Rahul Colony, NIT,
Faridabad .... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad ... Management

Appearances:-

Shri S.P Srivastava .....For the claimant
(A/R)

Shri Deepak Thukral .....For the Management
(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/59/2011 (IR(DU) dated 02/12/2011 to this tribunal for adjudication to the following effect.

"Whether the action of the management of BSNL, in terminating the services of Shri Triloki S/o Shri Khedu, Ex-Cable Jointer w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?"

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 03.04.2001. Initially his remuneration per month was Rs. 1600/- and the same was increased from time to time and his last drawn salary per month was Rs. 3300/-. The workman had worked with the management continuously for 09 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.

6. List of licensed contractors working for BSNL in the year 2010.

7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 2001 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Daisy Singh testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 09 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2001 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In

the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 2001 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joinder for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2001 to 2010 proves that the claimant Triloki on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joinder/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172,** he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without in ordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has

failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2001 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2001 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 09 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2001 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 09 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

> "Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more**(2006 SCC page 967, municipal counsel Sujanpur vs. surinder kumar relied)**

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556.** In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

> "32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.
>
> "33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench".

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848,** wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

> "In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 09 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1283.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री कृष्ण लाल यादव,कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 57/2012) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/35/2011 -आईआर(डीयू)]

डी.के. हिमांशु ,अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1283.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 57/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager,Bharat Sanchar Nigam Limited, Sector-15, Faridabad,(Haryana), and Shri Krishan Lal Yadav, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/35/2011-IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 57/2012

Date of Passing Award- 31.10.2022

Between:

Shri Krishan Lal Yadav,
S/o Shri Bhawani Prasad,
R/o House No. 155, Rahul colony,
NIT, Faridabad .... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad ... Management

Appearances:-

Shri S.P Srivastava (A/R) ..... For the claimant

Shri Deepak Thukral (A/R) ..... For the Management

AWARD

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> "**Whether the concerned awarded by G M BSNL, Faridabad is a sham contract in nature? Whether action taken by the management in terminating the services of Shri Krishan Lal Yadav S/o Shri Bhawani Prasad, Ex-Cable Jointer w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?"**

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 10.02.2001. Initially his remuneration per month was Rs. 1600/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 09 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials

of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and

structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 2001 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Daisy Singh testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 09 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2001 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 2001 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the

admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joinder for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2001 to 2010 proves that the claimant Krishan Lal Yadav on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joinder/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172,** he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without in ordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the

parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2001 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2001 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 09 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2001 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 09 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

> "Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more**(2006 SCC page 967, municipal counsel Sujanpur vs. surinder kumar relied)**

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556.** In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

> "32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.
>
> "33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench".

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848,** wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

> "In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and

obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 09 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1284.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राम चंदर, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली पंचाट (संदर्भ सं. 15/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/68/2011-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1284.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/2012) of the Central Government Industrial Tribunal cum Labour Court-II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager,Bharat Sanchar Nigam Limited, Sector-15, Faridabad,(Haryana), and Shri Ram Chander, Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/68/2011-IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 15/2012

Date of Passing Award- 31.10.2022

Between:

Shri Ram Chander,
S/o Shri Jagbali,
R/o House No. 2,
Rahul colony, NIT, Faridabad .... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad ... Management

Appearances:-

Shri S.P Srivastava .....For the claimant

(A/R)

Shri Deepak Thukral .....For the Management

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/68/2011 (IR(DU) dated 05.12.2011 to this tribunal for adjudication to the following effect.

> **"Whether the action of the management of BSNL, in terminating the services of Shri Ram Chander S/o Shri Jagbali, Ex-Cable Jointer w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?"**

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 03.06.2001. Initially his remuneration per month was Rs. 1600/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 09 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of

the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 2001 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Nishi Bhalla testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document.

These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 09 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2001 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 2001 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joinder for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2001 to 2010 proves that the claimant Ram Chander on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of

such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joinder/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172,** he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without in ordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2001 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required

for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2001 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 09 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2001 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 09 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

> "Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more**(2006 SCC page 967, municipal counsel Sujanpur vs. surinder kumar relied)**

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556.** In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

> "32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.
>
> "33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench".

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848,** wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

> "In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in

nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 09 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer.

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1285.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा) ,के प्रबंधतंत्र के संबद्ध नियोजकों और श्री मस्त राम ,कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 32/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/75/2011-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1285.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad,(Haryana), and Shri Mast Ram,Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/75/2011 -IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 32/2012

Date of Passing Award- 21/10/2022

Between:

Shri Mast Ram,
S/o Shri Shiv,
R/o House No. 119, 27Ft. Road,
Dabua Colony, NIT,
Faridabad .... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad ... Management

Appearances:-

Shri S.P Srivastava .....For the claimant
(A/R)

Shri Deepak Thukral ... For the Management
(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/75/2011 (IR(DU) dated 05/12/2011 to this tribunal for adjudication to the following effect.

"Whether the action of the management of BSNL, in terminating the services of Shri Mast Ram S/o Shri Shiv, Ex-Cable Jointer w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?"

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 10.01.1996. Initially his remuneration per month was Rs. 1500/- and the same was increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for ten years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 and produced the documents which have been marked as WW1 consisting of 3 documents in the nature of deposit slip issued by the JTO in the name of the claimant Mast Ram. On the basis of these documents the claimant has asserted to prove that he was working for the management from 10.01.1996 to 23.08.2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Nishi Bhalla testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant and those documents were marked as WW1/M1, WW1/M2 and WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. WW1/M3 is another document filed by the claimant and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 10 years when the job entrusted to him was of perennial nature. For the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of denying that he was the employee of the contractor when there was no contract prevalent for engagement of daily rated workers. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged where never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 1996 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence adduced by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence adduced in support of the claim the workman has relied upon the series of documents marked as WW1/1 to WW1/3. These are the documents though slender in evidentiary value have been relied upon by the claimant to show that during the period between 1996 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts are no way helpful in proving the employer and employee relationship. The claimant as PW1 stated that he was working as a cable joinder for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2006 to 2010 proves that the claimant Mast Ram on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant thus, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joinder/MDF and internet/gen operator was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded

production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172,** he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The claimant has stated that the plea of the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without in ordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted. On the contrary the claimant has filed several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extendt throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disproves the said documents which is turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 1996 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book

showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2000 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 15 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross- examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2000 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 10 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

> "Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more **(2006 SCC page 967, municipal counsel Sujanpur vs. surinder kumar relied)**

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556.** In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon

Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

"32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

"33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench".

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848,** wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

"In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 15 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1286.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा) ,के प्रबंधतंत्र के संबद्ध नियोजकों और श्री संत राम,कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 40/2012) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/83/2011-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1286.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad, (Haryana), and Shri Sant Ram ,Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/83/2011 -IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 40/2012

Date of Passing Award- 19.10.2022

Between:

Shri Sant Ram,
S/o Shri Ram Prasad,
R/o House No. 173, Gali No.-1,
Rahul Colony, NIT,
Faridabad .... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad ... Management

Appearances:-

Shri S.P Srivastava .....For the claimant
(A/R)

Shri Deepak Thukral .....For the Management
(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947

vide letter No. L-40012/83/2011 (IR(DU) dated 05/12/2011 to this tribunal for adjudication to the following effect.

"Whether the action of the management of BSNL, in terminating the services of Shri Sant Ram S/o Shri Ram Prasad, Ex-Cable Jointer w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?"

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 02.03.2001. Initially his remuneration per month was Rs. 1600/- and the same was increased from time to time and his last drawn salary per month was Rs. 3300/-. The workman had worked with the management continuously for 9 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.

4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 2001 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Daisy Singh testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 09 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2001 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was

illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 2001 to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joinder for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2001 to 2010 proves that the claimant Sant Ram on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joinder/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172,** he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without in ordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that

is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2001 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2001 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 09 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The

witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2001 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 09 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

> "Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more**(2006 SCC page 967, municipal counsel Sujanpur vs. SURINDER KUMAR relied)**

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma Devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma Devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556.** In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

> "32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is

established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

"33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench".

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848,** wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

"In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 09 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1287.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, सेक्टर-15, फरीदाबाद, (हरियाणा), के प्रबंधतंत्र के संबद्ध नियोजकों और श्री महादेव,कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-

श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ सं. 30/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 16.11.2022 को प्राप्त हुआ था।

[सं. एल-40012/73/2011-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1287.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Sector-15, Faridabad,(Haryana), and Shri Mahadev,Worker, which was received along with soft copy of the award by the Central Government on 16.11.2022.

[No. L-40012/73/2011 -IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 30/2012

Date of Passing Award- 20.10.2022

Between:

Shri Mahadev,
S/o Shri Bihari Lal,
R/o House No. 636,
Rahul Colony, NIT,
Faridabad .... Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Sector-15, Faridabad ... Management

Appearances:-

Shri S.P Srivastava ..... For the claimant
(A/R)

Shri Deepak Thukral .....For the Management
(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40012/73/2011 (IR(DU) dated 05/12/2011 to this tribunal for adjudication to the following effect.

> **"Whether the action of the management of BSNL, in terminating the services of Shri Mahadev S/o Shri Bihari Lal, Ex-Cable Jointer w.e.f 23.08.2010, is legal and justified? What relief the workman is entitled to?"**

The claimant in the claim statement has stated that he had been working with the management BSNL as Cable Joinder w.e.f 05.6.2001. Initially his remuneration per month was Rs. 1600/- and the same was

increased from time to time and his last drawn salary per month was Rs. 3500/-. The workman had worked with the management continuously for 09 years diligently leaving no scope of complaint. During this period he was raising demand for nonpayment of wage as per the approved minimum wage rate, non extension of the benefits like PF, ESI, paid leave, bonus, overtime etc. This caused annoyance to the management who was in search of opportunity to terminate the service of the claimant. On 23/08/2010 when the claimant was on duty, the officials of the management misbehaved him and informed about termination of his service without assigning any reason. At the time of such termination no notice of termination, notice pay or termination compensation was paid to the claimant in clear violation of the provisions of section 25F of the Industrial Disputes Act. Being aggrieved the claimant made efforts to meet the officials of BSNL and to ensure reinstatement in service. The officials of BSNL did not listen to his grievance and finding no other way and for the arbitrary action of the management he served a demand notice on 31.08.2010 by Registered Post with AD. In the month of August when the management terminated his employment the remuneration for the said month was not even paid to him. After receipt of the demand notice the management gave a reply denying all the contentions raised by the claimant. Hence he raised a dispute before the labour commissioner where the management appeared but refused to reinstate him. For the failure in conciliation the appropriate government referred the matter for adjudication in terms of the reference. In the claim statement the claimant has thus, prayed for a direction to the management to reinstate him in service with continuity and full back wages alongwith all consequential benefits. The claimant has also advanced a prayer for release of his withheld remuneration for the month of August 2010 and to direct the management to extend all the service benefit like PF, ESI etc on reinstatement. The claimant has also stated that the senior officers of BSNL for executing some urgent work used to take imprest in which the normal procedure like bidding and inviting quotation etc are not followed. For execution of the said urgent works persons like the claimants are engaged and paid out of the advance taken for those works. The works discharged by the claimant and persons like him are of perennial in nature since, these persons use to work as cable joinders, maintenance and upkeep of telephone exchanges, maintenance of telephone lines and attend the faults reported by the customers.

The management BSNL filed the written statement rebutting the stand of the claimant. While denying the employer and employee relationship between them the management has pleaded that the proceeding is not maintainable. The specific stand of the management is that BSNL has enough Group D employees having no occasion for engaging casual or daily wage temporary workers. If any petty work is to be undertaken usually the same are given to the contractors selected through proper bidding process. The said contractor might have engaged the claimant for execution of any such work but the same would not confer the right on the claimant to be treated as an employee of BSNL. The other stand of the management is that the claimant, since was never employed by the management the question of illegal termination by the management does not arise and the management is under no obligation of providing the benefits of PF and ESI etc to the claimant. The management has also denied the stand of the claimant that the senior officers of BSNL for execution of certain urgent work use to take imprest (advanced against some urgent work for which normal procedure like bidding, inviting quotation etc is not possible) and pay out of that amount to the concerned workman executing the work. Thus, the management has prayed for dismissal of the wrong and incorrect claim advanced by the claimant, claiming himself as an employee of BSNL.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of the reference.

During hearing the claimant filed an application seeking a direction to the management for production of record in possession of the management. The documents sought by the claimant are:-

1. The paper relating to the contract if any entered between the BSNL and the contractors.
2. The original board resolution authorizing the person who has signed the WS.
3. Various grade and structure of employee applicable to the BSNL.
4. The original registration issued to the BSNL u/s 7 of the Contract Labour Regulation and Abolition Act 1970.
5. The license issued by the licensing officer u/s 13 of the Contract Labour Regulation and Abolition Act 1970 to the contractors engaged by BSNL.
6. List of licensed contractors working for BSNL in the year 2010.
7. Copy of the returns submitted by BSNL in respect of all such contractors to the Government Authorities i.e ESIC and EPFO etc.

But the management did not produce the documents as called for except the copy of a contract awarded to only one contractor, photocopy of the Board Resolution, the list of various Grade and structure of employees applicable to the BSNL alongwith an affidavit sworn by AGM Legal stating that the remaining documents are not within the custody of the management. Thus, the claimant by order dated 13.03.2019 passed by this tribunal was given liberty of producing secondary evidence in respect of the documents sought for.

During hearing the claimant examined himself as WW1 but has not produced any document in support of his employment with BSNL. On the basis of his oral statement the claimant has asserted to prove that he was working for the management from 2001 to 2010 and during the undisputed point of time discharging various duties assigned to him as an employee of BSNL. But the management BSNL while denying his relationship as an employee illegally terminated his service. This witness was cross examined at length by the management. On behalf of the management the AGM Legal Smt. Daisy Singh testified as MW1 and also produced some documents which were marked as MW1/1 and MW1/2. These documents are nothing but authority letter issued to the witness to depose. The witness was confronted with the secondary evidence produced by the claimant the original of which have been filed in the connected case registered as ID No. 45/2012 and marked as WW1/M1, WW1/M2, WW1/M3. The witness examined by the management admitted the contents of the said document. These documents are in the nature of the circulars issued by the AGM of BSNL directing the subordinate authorities to comply with the provisions of labour law strictly and to revise the wage of the temporary status Mazdoor/causal labour. Exhibit WW1/M3 is the document filed by the claimant in ID 45/2012 and confronted to the management witness. This is a reply given to the complaint made by the claimant demanding higher wage wherein the claimant was intimated by the AGM that the Cable maintenance work is being done by the labourer engaged through operation and maintenance tender for underground cable network in FBD SSA and all these labour are contractors workers and are getting remuneration as per Haryana Government minimum wages Rules.

At the outset of the argument the Ld. A/R for the claimant strenuously argued that this is a typical case of unfair labour practice meted to the workman. He was made to work as a contractual worker for 09 years. When the job entrusted to him was of perennial nature, for the legitimate demand advanced by him with regard to the service condition, the management took revenge and terminated his service. Now when the claimant is fighting this litigation against the mighty employer, the later is trying to shed all the responsibility on the plea that no employer and employee relationship exists between them. The management has gone to the extent of saying that he is the employee of the contractor when there was no contract prevalent for engagement of daily rated workers during the relevant time. But the oral and documentary evidence adduced by the claimant as well as the management clearly shows that the management was engaging contractors without being registered under the Contract Labour Act and the contractors so engaged were never having registration under the Contract Labour Act., Thus the contract if any between the management and the contractor were sham and intended to camouflage the legal and legitimate rights of the claimant workman. Infact the claimant was working in the premises of the management under its supervision and control and discharging perennial nature of work. But the management in gross violation of provisions of Id Act, in a revenge full manner terminated his service which amounts to unfair labour practice.

The counter reply of the Ld. A/R for the management was that the claimant has not produced any documents showing employer and employee relationship between the parties though the burden for the same heavily lies on the claimant. The claimant though had made a faint attempt of producing some documents to make the tribunal infer such a relationship, failed in his attempt. His further argument is that the BSNL is a state owned company having its own policy of recruitment. It has enough no. of Group D employees and as such there was never any need for employing causal/daily wage workers. Sometimes for some petty work the contractors are engaged through proper Bidding process and the said contractors engage their own manpower for execution of the work. The manpower engaged by the contractor in no way can be treated as the employees of BSNL management. He thereby submitted that the claim advanced by the claimant is false, baseless and liable to be rejected.

FINDINGS

ISSUE No.1

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of the other issues. It has been claimed by the workman that he had worked for BSNL from 2001 to 2010 as a cable jointer/MDF and internet/gen operator till the year 2010 when his service was illegally terminated. During this period he had worked continuously and diligently for the management. In the oral evidence by the claimant as WW1 he has fully supported the statement of claim filed by him. With regard to the documentary evidence in support of the claim, the workman has not filed any document. But argument was advanced by the claimant that the secondary evidence of the original documents filed in ID 45/2012, when confronted to the management witness, she admitted the contents of the same. The said documents show that during the period between 2001

to 2010 he was working as an employee of management BSNL and his name appears in different papers created during that undisputed period of time. Serious objection was raised to the admissibility of the said document by the management. The Ld. A/R for the management argued that the documents which are the money receipts gate passes and complaint books are no way helpful in proving the employer and employee relationship. The claimant as WW1 stated that he was working as a cable joinder for the management at Faridabad. He was attending to the job of fault repair on the complaint of the customers. The copy of the log book and the certificate of fault repair given by the customers which have been filed by the claimant in ID No. 45/2012 and marked in series of H. These documents of the year 2001 to 2010 proves that the claimant Mahadev on behalf of Pali Exchange of BSNL at Faridabad was attending to the work in respect of fixing the complaints and obtaining compliance report from the customers including the local MLA as one of the customer.

The Ld. A/R for the management raised dispute to the relevancy of these documents in proving the employer and employee relationship. Be its stated here that the plea of the management BSNL taken is that the claimant was never employed by the management BSNL and he might have been engaged by the contractor who was engaged for executing petty works. In the written statement the management had furnished the list of such contractors engaged during the relevant period. The claimant during the hearing, made a prayer for production of document relating to the contract awarded. But surprisingly the management produced incomplete copy of the contract documents relating to engagement of security guards and housekeeping staff. No document relating to engagement of cable joinder/MDF and internet/gen operator through contractor was ever filed though the management witness MW1 during cross examination has categorically admitted that all the records relating to the contractors working for BSNL are available in their office. She further stated that she cannot name the contractor under whom the claimant was working or if he was at all working under any contractor.

The Ld. A/R for the claimant at this juncture disputed and challenged the credibility of the management evidence on the ground that the management is guilty of suppressing material evidence. When all the contracts related papers are available in the office of the management and when the claimant had demanded production of the same, the management should have produced those documents to prove that no daily wager are engaged directly by the BSNL and the work of cable jointing, maintenance of line and up keeping of the exchanges are done through contractors. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Krishna Ji Ketkar vs. Mahomed Haji Latif and others (1968)AIR (SC)1413** and the case of **State Inspector of Police vs. Surya Shankaram Karri (2006)7SCC172,** he submitted that for non production of material document which could have thrown light on the dispute of employer employee relationship, the management is guilty of suppressing valuable evidence and adverse inference is bound to be drawn against them. To counter the stand of the management the Ld. A/R for the claimant argued that the stand about the contractor taken by the management is false and fabricated. For that reason the papers relating to the award of contract have been suppressed. He also submitted that if at all any paper relating to contract exists at the end of the management the same is sham and intended to camouflage the right of the claimant.

The other argument is that the plea about the contract awarded to execute petty work as claimed by the management is false since, the management despite the demand made by the claimant to show the registration of BSNL under the CLRA failed to produce the same. The management though admitted about engagement of contractors and furnished a list of the contractors in the WS, when called upon failed to justify if the said contractors were having license for engagement of contract Labour and if the claimant was a labour engaged through the said contractor. This argument of the Ld. A/R for the claimant sounds convincing.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without in ordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workman has asserted that he was working directly under the management having no intermediary contractor. Though, in the written statement a reference has been made by the management about the contractor engaged for executing petty work, as observed in the preceding

paragraph the management has failed to prove the same. The documents filed by the AGM testifying as MW1 which are in the nature of the contract awarded to a contractor for supply of security guard or housekeeping staff has no connection with the claim of the claimant. Though on the basis of these documents the A/R for the management emphatically argued that the claimant was the employee of the contractor the same is not accepted as not proved. On the contrary the claimant has confronted several photocopies of the log book for fault repair for maintenance of the gen. set the certificates issued by the customers after the fault of their telephones and internet connection were attended and fixed by the claimant to the management witness. All these documents created during the undisputed period of time bear the name of the claimant. Hence, the tribunal as stated above has no hesitation in accepting the said secondary evidence which to some extent throws light on the employer and employee relationship between the parties. NO contrary evidence has been adduced by the management to disprove the said documents which in turn becomes admissible to support the claim of the claimant. Thus, all these documents together with oral evidence adduced by the claimant and the management witness clearly lead to conclusion that during the relevant period between 2001 to 2010 the workman was the employee of the management, discharging perennial nature of work and there existed a relationship of employer and employee between them.

Of course the Ld. A/R for the management challenged the credibility of the evidence adduced by the claimant in proving the employer and employee relationship. But on behalf of the claimant reliance has been placed in the case of **Hussainbhai Calicut vs. the Alath Factory The zhill Union Kozhikode and others (1978)AIR (SC) 1410** and in the case of **Bharat Heavy Electricals Ltd. vs. PO Labour Court VIII and others (2015)3CLR 363 Delhi High Court** to argue that when a worker produces goods and services for the employer and the employer has economic control over the workers subsistence, the presence of the intermediary contractor has no value or consequence and it is required for the courts and tribunals to lift the veil or looking at the conspectus of factors governing employment.

In this regard reliance can be placed in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workman has relied upon the entries made in the log book showing the work and job discharged by him. This tribunal finds no reason of discarding the said log book. On the contrary it is held that the entries in the said log book were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2001 to 2010, the workman was working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been successfully rebutted by the management in this case. The plea of the management that the claimant was the employee of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workman.

ISSUE No.2

The grievance of the claimant is that he had worked for the management for 09 years without being paid the minimum wage. When he raised a genuine and lawful demand for the same the management got annoyed and terminated his service w.e.f. 23.08.2010. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. The claimant examined as WW1 in his oral statement has stated that the management orally terminated his service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against him before termination. The witness was cross-examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit his testimony.

Now it is to be examined if the said act of termination and denial of service benefits by the management is illegal. Be it stated here that the evidence of the claimant has not been controverted by the management. While answering issue No.1 it has already been held that the workman was working for the management and discharging his duty for the period between 2001 to 2010. In the case of **ONGC vs. ONGC contractual workers union reported in 2008 LLR page 801** it has been held that

in order to ascertain the status of the workman the period of work rendered by him is also taken into consideration. In this case the workman has stated that he was the employee of the management for 09 years and the later illegally terminated his service.

The law is well settled that when the workman successfully establishes his relationship as an employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

> "Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages."
>
> In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case were the workman has prayed for a relief of reinstatement simplicitor by the management No.1. He has further stated that the work done by him is perennial in nature. While adducing evidence the workman has successfully proved that for the relevant calendar year of his engagement he had completed 240 days of work and there by duly discharged the burden put on him to prove that during a calendar year he had discharged work for 240 days more**(2006 SCC page 967, municipal counsel Sujanpur vs. SURINDER KUMAR relied)**

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma Devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process. But the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sangathana (2009) 8 SCC Page 556.** In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC referred supra observed as under:-

> "32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.
>
> "33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi1. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Uma Devi1. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them

of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench".

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848,** wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank reported in (1950) LLJ 921** The Hon'ble Supreme Court had observed:

"In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimant is that he was working as casual workers against the permanent vacancy and the nature of the duty discharged by him was perennial in nature. But the management in order to deprive him of his right to be permanent and regularization illegally terminated his service.

Hence, for the foregoing reasons it is concluded that the claimant/workman was subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. He having discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workman who was initially appointed as a casual workers and continued to work for 09 years and also worked for more than 240 days in the calendar years preceding to his termination. The issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference is accordingly answered in favour of the claimant. The management is directed to reinstate the claimant into service with continuity thereof from the date of illegal termination and pay the arrear salary for the intervening period between termination and reinstatement at the rate of 40% of the last drawn wage. The management is further directed to release the unpaid salary of the claimant for the month of August 2010 at the rate of his last drawn salary and to extend the benefits of EPF and ESI etc alongwith other service benefits like paid leave, bonus etc. on reinstatement. The management is further directed to give effect to the direction given in this award within one month from the date of publication of the award failing which the management shall be liable to pay the wage to the claimant at the rate of his last drawn wage from the date of termination and till the reinstatement is made alongwith interest @ 9% per annum from the date of accrual and till the payment is actually made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1288.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड, एसएएस नगर (पंजाब); मेसर्स केएस इंटरप्राइजेज, एसएएस नगर (पंजाब) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री प्रदीप कुमार पुत्र श्री जवाला राम, एसएएस नगर (पंजाब) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 16/2021) प्रकाशित करती है।

[सं. Z-16025/04/2022-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1288.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2021) of the Central Government Industrial

Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Bharat Petroleum Corporation Ltd., SAS Nagar (Punjab); M/s KS Enterprises, SAS Nagar (Punjab) and Shri Pardeep Kumar S/o Jawala Ram, SAS Nagar (Punjab).

[No. Z-16025/04/2022-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. Tripathi, Presiding Officer.

ID No.16/2021

Registered on:-05.07.2021

(Direct Filing under Section 2A)

Sh. Pardeep Kumar S/o Jawala Ram R/o Prem Naga Lalru Mandi, the. Derabassi, Distt. SAS Nagar (8728031637, 6283730545)

C/o Vinod Chudh Labour Law Advisor, Authorised Representative, Office Lalru Mandi, The. Derabassi, Distt. SAS Nagar (9356085005) ....Workman

Versus

1. M/S Bharat Petroleum Corporation Ltd.
   (LPG Bottling Plant) Vill. Tiwana, PO,
   Lalru The. Derabassi ,
2. Distt. SAS Nagar Through its MD/GM
3. M/s KS Enterprises Through its Prop.
   C/o M/s Bharat Petroleum Corporation Ltd.
   (LPG Bottling Plant) Vill. Tiwana,
   PO, Lalru The. Derabassi,
   Distt. SAS Nagar ... Respondents/Managements

Order

Passed On:- 08/09.11.2022

1. The workman has directly filed this claim petition under Section 2-A of the Industrial Disputes Act, 1947, in pursuance of the certificate issued by the Assistant Labour Commissioner, (Central) Chandigarh, dated 07.12.2020. The workman has filed demand notice U/s 2-A of the Industrial Disputes Act, 1947 in regard to illegal, Arbitrarily & Wrongful termination b for reinstatement with continuity of service and with full back wages & All consequential benefits including seniority.

2. The workman Sh. Pardeep Kumar S/o Jawala Ram himself signed application on 11.10.2022, he has moved and requested before the Tribunal that he does not want to pursue the case. It has also been submitted by Respondent No.2 that he has no objection. Statement of the workman has also been recorded. Workman is not interested to carry on the case.

4. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J.K. TRIPATHI, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1289.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एग्जीक्यूटिव डायरेक्टर, मेसर्स ओएनजीसी लिमिटेड, अंकलेश्वर (गुजरात) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री शाह धर्मेश राजपालभाई, भरुच (गुजरात) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 85/2019) प्रकाशित करती है।

[सं. L-30012/14/2019-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1289.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 85/2019) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Executive Director, M/s ONGC Ltd., Ankleshwar (Gujarat) and Shri Shah Dharmesh Rajpalbhai, Bharuch (Gujarat).

[No. L-30012/14/2019-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT, AHMEDABAD

Present: Sunil Kumar Singh-I,
Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated : 10.11.2022

Reference: (CGITA) No- 85/2019

The Executive Director,
M/s ONGC Ltd.,
Ankleshwar Asset,
Ankleshwar (Gujarat)-390010 .... First Party

V

Shri Shah Dharmesh Rajpalbhai,
36, Sai Baba Krupa,
Ganga Jamna Society,
B/h. Ginwala High School,
Ankleshwar,
District – Bharuch (Gujarat) .... Second Party

Adv. for the First Party employer : Shri K. V. Ghadia & Shri M. K. Patel
Adv. for the Second Party workman : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/14/2019-IR(M) dated 20.05.2019 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"**Whether the termination/disengagement of the services of Shri Shah Dharmesh Rajpalbhai w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper? If not, to what relief the concerned workman Shri Shah Dharmesh Rajpalbhai is entitled to?"**

1. Today, the matter was called out. First Party employer represented through Ld. Counsels Shri K. V. Gadhia and Shri M. K. Patel. None responded for Second Party / Workman. The reference dates back to 20.05.2019. The notice Ex. 2 was served on both the parties vide acknowledgements Ex. 3 and 4, wherein the second party was asked to submit the statement of claim on 06.11.2019. Second Party / workman has been afforded more than 10 opportunities to file his statement of claim, but for no avail. It appears that the Second Party workman is not interested to proceed further in the matter.

2. The reference is accordingly disposed of in absence of statement of claim and evidence, with the observation that termination of services of Shri Shah Dharmesh Rajpalbhai w.e.f. 30.10.2015 by First Party employer is legal, just and proper.

3. Let two copies of the Award be sent to the Appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1290.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एग्जीक्यूटिव डायरेक्टर, मेसर्स ओएनजीसी लिमिटेड, अंकलेश्वर (गुजरात) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पटेल तेजशकुमार जशवंतलाल, अंकलेश्वर (गुजरात) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 86/2019) प्रकाशित करती है।

[सं. L-30012/15/2019-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1290.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (86/2019) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Executive Director, M/s ONGC Ltd., Ankleshwar (Gujarat) and Shri Patel Tejashkumar Jashvantlal, Ankleshwar (Gujarat).

[No. L-30012/15/2019-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, AHMEDABAD

Present: Sunil Kumar Singh-I,
Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated : 10.11.2022

Reference: (CGITA) No- 86/2019

The Executive Director,
M/s ONGC Ltd.,
Ankleshwar Asset,
Ankleshwar (Gujarat)-390010 .... First Party

V

Shri Patel Tejashkumar Jashvantlal,
56/57, Mahavirnagar,
Juna Diva Road,
Ankleshwar (Gujarat)-393001 ... Second Party

Adv. for the First Party employer : Shri K. V. Ghadia & Shri M. K. Patel
Adv. for the Second Party workman : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/15/2019-IR(M) dated 20.05.2019 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the termination/disengagement of the services of Shri Patel Tejashkumar Jashvantlal w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper? If not, to what relief the concerned workman Shri Patel Tejashkumar Jashvantlal is entitled to?"

1. The reference dates back to 20.05.2019. Both the parties were issued notices by registered post. The notice Ex. 2 was served on both the parties by acknowledgements Ex. 3 and 4, wherein the second party was

asked to submit the statement of claim on 06.11.2019 but till date despite giving more than 10 opportunities for submitting statement of claim, the second party workman has not preferred to submit the statement of claim. Thus it appears that the second party workman has not been willing to proceed with the case.

2. Therefore, the reference is disposed of in the absence of the statement of claim and evidence, if any, of the second party, with the observation as under: "the termination/disengagement of the services of Shri Patel Tejashkumar Jashvantlal w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper".

3. Let two copies of the Award be sent to the Appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1291.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एग्जीक्यूटिव डायरेक्टर, मेसर्स ओएनजीसी लिमिटेड, अंकलेश्वर (गुजरात) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पटेल परेशकुमार अम्बालाल, भरुच (गुजरात) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 87/2019) प्रकाशित करती है।

[सं. L-30012/16/2019-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1291.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 87/2019) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Executive Director, M/s ONGC Ltd., Ankleshwar (Gujarat) and Shri Patel Pareshkumar Ambalal, Bharuch (Gujarat).

[No. L-30012/16/2019-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT, AHMEDABAD

Present: Sunil Kumar Singh-I,

Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated : 10.11.2022

Reference: (CGITA) No- 87/2019

The Executive Director,
M/s ONGC Ltd.,
Ankleshwar Asset,
Ankleshwar (Gujarat)-390010 ... First Party

V

Shri Patel Pareshkumar Ambalal,
R/o. Narmada Falia,
At/Post-Zadeshwar,
Tal. & District – Bharuch (Gujarat)-392011 .... Second Party

Adv. for the First Party employer : Shri K. V. Ghadia & Shri M. K. Patel
Adv. for the Second Party workman : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/16/2019-IR(M) dated 20.05.2019 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the termination/disengagement of the services of Shri Patel Pareshkumar Ambalal w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper? If not, to what relief the concerned workman Shri Patel Pareshkumar Ambalal is entitled to?"

1. The reference dates back to 20.05.2019. Both the parties were issued notices by registered post. The notice Ex. 2 was served on both the parties, wherein the second party was asked to submit the statement of claim on 06.11.2019 but till date despite giving more than 10 opportunities for submitting statement of claim, the second party workman has not preferred to submit the statement of claim. Thus it appears that the second party workman has not been willing to proceed with the case.

2. Therefore, the reference is disposed of in the absence of the statement of claim and evidence, if any, of the second party, with the observation as under: "the termination/disengagement of the services of Shri Patel Pareshkumar Ambalal w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper".

3. Let two copies of the Award be sent to the Appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1292.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एग्जीक्यूटिव डायरेक्टर, मेसर्स ओएनजीसी लिमिटेड, अंकलेश्वर (गुजरात) के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती शोभा यशवंत कदम, भरुच (गुजरात) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 88/2019) को प्रकाशित करती है।

[सं. L-30012/17/2019-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1292.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 88/2019) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Executive Director, M/s ONGC Ltd., Ankleshwar (Gujarat) and Smt. Shobha Yashwant Kadam, Bharuch (Gujarat).

[No. L-30012/17/2019-IR(M)

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, AHMEDABAD

Present: Sunil Kumar Singh-I, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated : 10.11.2022

Reference: (CGITA) No- 88/2019

The Executive Director,
M/s ONGC Ltd.,
Ankleshwar Asset,

Ankleshwar (Gujarat)-390010 .... First Party

V

Smt. Shobha Yashwant Kadam,
169, Maruti Nagar,
Village – Andada,
Ankleshwar,
District – Bharuch (Gujarat) .... Second Party

Adv. for the First Party employer : Shri K. V. Ghadia & Shri M. K. Patel
Adv. for the Second Party workman : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/17/2019-IR(M) dated 20.05.2019 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"**Whether the termination/disengagement of the services of Smt. Shobha Yashwant Kadam w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper? If not, to what relief the concerned workman Smt. Shobha Yashwant Kadam is entitled to?**"

1. The reference dates back to 20.05.2019. Both the parties were issued notices by registered post. The notice Ex. 2 was served on both the parties by acknowledgements Ex. 3 and 4, wherein the second party was asked to submit the statement of claim on 06.11.2019 but till date despite giving more than 10 opportunities for submitting statement of claim, the second party workman has not preferred to submit the statement of claim. Thus it appears that the second party workman has not been willing to proceed with the case.

2. Therefore, the reference is disposed of in the absence of the statement of claim and evidence, if any, of the second party, with the observation as under: "the termination/disengagement of the services of Smt. Shobha Yashwant Kadam w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper".

3. Let two copies of the Award be sent to the Appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1293.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एग्जीक्यूटिव डायरेक्टर, मेसर्स ओएनजीसी लिमिटेड, अंकलेश्वर (गुजरात) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पाल प्रवीणकुमार लल्लूराम, भरुच (गुजरात) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 90/2019) को प्रकाशित करती है।

[सं. L-30012/19/2019-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1293.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 90/2019) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Executive Director, M/s ONGC Ltd., Ankleshwar (Gujarat) and Shri Pal Praveenkumar Lalluram, Bharuch (Gujarat).

[No. L-30012/19/2019-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT, AHMEDABAD

Present: Sunil Kumar Singh-I, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated : 10.11.2022

Reference: (CGITA) No- 90/2019

The Executive Director,
M/s ONGC Ltd.,
Ankleshwar Asset,
Ankleshwar (Gujarat)-390010 .... First Party

V

Shri Pal Praveenkumar Lalluram,
9, Padmavati Nagar,
Rajpipla Road,
District – Bharuch (Gujarat) .... Second Party

Adv. for the First Party employer : Shri K. V. Ghadia & Shri M. K. Patel
Adv. for the Second Party workman : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/19/2019-IR(M) dated 20.05.2019 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the termination/disengagement of the services of Shri Pal Praveenkumar Lalluram w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper? If not, to what relief the concerned workman Shri Pal Praveenkumar Lalluram is entitled to?"

1. The reference dates back to 20.05.2019. Both the parties were issued notices by registered post. The notice Ex. 2 was served on both the parties by acknowledgements Ex. 3 and 4, wherein the second party was asked to submit the statement of claim on 06.11.2019 but till date, despite giving more than 10 opportunities for submitting statement of claim, the second party workman has not preferred to submit the statement of claim. Thus it appears that the second party workman has not been willing to proceed with the case.

2. Therefore, the reference is disposed of in the absence of the statement of claim and evidence, if any, of the second party, with the observation as under: "the termination/disengagement of the services of Shri Pal Praveenkumar Lalluram w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper".

3. Let two copies of the Award be sent to the Appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1294.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एग्जीक्यूटिव डायरेक्टर, मेसर्स ओएनजीसी लिमिटेड, अंकलेश्वर (गुजरात) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री वसावा कानुभाई छनाभाई, भरुच (गुजरात) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद पंचाट (संदर्भ सं. 91/2019) को प्रकाशित करती है।

[सं. L-30012/20/2019-IR(M)

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1294.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 91/2019) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Executive Director, M/s ONGC Ltd., Ankleshwar (Gujarat) and Shri Vasava Kanubhai Chhanabhai , Bharuch (Gujarat).

[No. L-30012/20/2019-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present: Sunil Kumar Singh-I, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated : 10th November, 2022

Reference: (CGITA) No- 91/2019

The Executive Director,
M/s ONGC Ltd.,
Ankleshwar Asset,
Ankleshwar (Gujarat)-390010. .....First Party

V

Shri Vasava Kanubhai Chhanabhai,
46, Punitnagar Society,
Nr. Pushpakunj Society,
Ankleshwar,
District – Bharuch (Gujarat)-393001 .... Second Party

Adv. for the First Party employer : Shri K. V. Ghadia & Shri M. K. Patel
Adv. for the Second Party workman : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/20/2019-IR(M) dated 20.05.2019 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the termination/disengagement of the services of Shri Vasava Kanubhai Chhanabhai, w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper? If not, to what relief the concerned workman Shri Vasava Kanubhai Chhanabhai, is entitled to?"

1. The reference dates back to 20.05.2019. Both the parties were issued notices by registered post. The notice Ex. 2 was served on both the parties vide acknowledgements Ex. 3 and 4, wherein the second party was asked to submit the statement of claim on 06.11.2019 but till date despite giving more than 10 opportunities for submitting statement of claim, the second party workman has not preferred to submit the statement of claim. Thus it appears that the second party workman has not been willing to proceed with the case.

2. Therefore, the reference is disposed of in the absence of the statement of claim and evidence, if any, of the second party, with the observation as under: "the termination/disengagement of the services of Shri Vasava Kanubhai Chhanabhai, w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper".

3. Let two copies of the Award be sent to the Appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1295.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एग्जीक्यूटिव डायरेक्टर, मेसर्स ओएनजीसी लिमिटेड, अंकलेश्वर (गुजरात) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पटेल राजेन्द्रकुमार रमेशभाई, भरुच (गुजरात) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद पंचाट (संदर्भ सं. 89/2019) को प्रकाशित करती है।

[सं. L-30012/18/2019-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1295.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 89/2019) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Executive Director, M/s ONGC Ltd., Ankleshwar (Gujarat) and Shri Patel Rajendrakumar Rameshbhai, Bharuch (Gujarat).

[No. L-30012/18/2019-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present: Sunil Kumar Singh-I, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated : 10th November, 2022

Reference: (CGITA) No- 89/2019

The Executive Director,
M/s ONGC Ltd.,
Ankleshwar Asset,
Ankleshwar (Gujarat)-390010. ...First Party

V

Shri Patel Rajendrakumar Rameshbhai,
570, G.H.B. Surti Bhagod,
Ankleshwar,
District – Bharuch (Gujarat) .... Second Party

Adv. for the First Party employer : Shri K. V. Ghadia & Shri M. K. Patel
Adv. for the Second Party workman : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/18/2019-IR(M) dated 20.05.2019 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the termination/disengagement of the services of Shri Patel Rajendrakumar Rameshbhai w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper? If not, to what relief the concerned workman Shri Patel Rajendrakumar Rameshbhai is entitled to?"

1. The reference dates back to 20.05.2019. Both the parties were issued notices by registered post. The notice Ex. 2 was served on both the parties vide acknowledgements Ex. 3 and 4, wherein the second party was asked to submit the statement of claim on 06.11.2019 but till date despite giving more than 10 opportunities for

submitting statement of claim, the second party workman has not preferred to submit the statement of claim. Thus it appears that the second party workman has not been willing to proceed with the case.

2. Therefore, the reference is disposed of in the absence of the statement of claim and evidence, if any, of the second party, with the observation as under: "the termination/disengagement of the services of Shri Patel Rajendrakumar Rameshbhai w.e.f. 30.10.2015 by the management of ONGC Ltd., Ankleshwar is legal, just and proper".

3. Let two copies of the Award be sent to the Appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1296.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सेंट्रल वेयरहाउसिंग कारपोरेशन, रीजनल ऑफिस, लखनऊ; मेसर्स सेंट्रल वेयरहाउसिंग कारपोरेशन, कॉर्पोरेट ऑफिस, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और जनरल सेक्रेटरी, सेंट्रल वेयरहाउसिंग कारपोरेशन श्रमिक कल्याण संघ, लखनऊ के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 06/2017) को प्रकाशित करती है।

[सं. L-42011/11/2016-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1296.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 06/2017) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Central Warehousing Corporation, Regional Office, Lucknow; M/s Central Warehousing Corporation, Corporate Office, New Delhi and The General Secretary, Central Warehousing Corporation Shramik Kalyan Sangh, Lucknow.

[No. L-42011/11/2016-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

Present: JUSTICE ANIL KUMAR Presiding Officer

I.D. No. 06/2017

Ref. No. L-42011/11/2016-IR (M) dated: 02.02.2017

BETWEEN

The General Secretary
Central Warehousing Corporation Shramik Kalyan Sangh
Lucknow Region, 4/387, Virat Khand
Gomti Nagar, Lucknow (UP) 226010.

AND

1. The Regional Manager
M/s Central Warehousing Corporation,
Regional Office, Vibhuti Khand, Gomti Nagar,
Lucknow (UP) 226010
2. Managing Director
Central Warehousing Corporation, Corporate Office, 4/1,
Siri Institutional Area,
August Kranti Marg, Haus Khas
New Delhi – 110016.

AWARD

By order No. L-42011/11/2016-IR (M) dated: 02.02.2017 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

"क्या प्रबन्धन, केन्द्रीय भण्डारण निगम, नई दिल्ली व लखनऊ द्वारा श्री नन्द किसोर, भण्डार सहायक श्रेणी-1 से कनिष्ठ अधीक्षक, पद पर पदोन्नति कर उसे पदोन्नति स्थान पर ज्वाइनिंग के लिए कार्यमुक्त न करना व प्रोन्नति Foregone मान लिया जाना न्यायोचित एवं बैध है? यदि नहीं तो वादी किस राहत को पाने का हकदार है?"

Accordingly, an industrial dispute No. 06/2017 has been registered on 27.02.2017.

Submissions on behalf of the applicant/workman:

On behalf of the workman, it has been submitted that the workman, who has been working on the post of WAG-I at Basti, by an order dated 30.07.2015, issued by the Asstt. General Manager (Estt.), Central Warehousing Corporation, New Delhi (hereinafter referred to as Corporation) in which it was mentioned that with the approval of the Competent Authority the persons whose names find place in the said list, working as WAG-I are promoted to the post of Jr. Suptd. In the pay scale of Rs. 11200-30600 (IDA) w.e.f. from the date they take over charge of the post.

In the said list the name of the workman/claimant finds place at serial no. 80.

Thereafter on 04.08.2015, in pursuance to the order dated 30.07.2015, Sr. Asstt. General Manager (Admin) of Corporation, Lucknow issued an order by which the workman Nand Kishore was posted at Naini. In the said order it was also mentioned that he should join his duties at new place of posting and submit joining report to all concerned immediately.

On behalf of the workman, it is submitted that after passing of the order dated 04.08.2015 by which he was transferred by way of promotion at Naini, he made a representation dated 1308.2016 to the Regional Manager of the Corporation, Regional Office, Lucknow inter alia requesting therein that keeping in view his family condition, the place of his transfer from Naini may be changed to Gorakhpur.

However, no heed had been paid, so, he again made a representation in this regard on 26.09.2015 to Regional Manager of the Corporation, disposed of by order dated 01.10.2015, passed by the Asstt. General Manger (Estt) of the Corporation, New Delhi, quoted herein below:

"*Memorandum*

Shri Nand Kishore, WAG-I, CW, Basti may refer to Office Order of even number dated 30/7/2015 vide which he has been promoted to the post of Jr. Supdt. and his further place of posting to be decided by RM.

In this connection, it has been observed that he has not joined his duty as Jr. Supdt. so far. The Competent Authority has desired that he should join his duty as Jr. Supdt. by 15/10/2015 failing which it will be presumed that he is not interested to join on his promotion and his promotion will be treated as foregone and he will not be considered for promotion for a further period of two years from the date of issue of said order dated 30 7 15."

After receiving the said order, workman/claimant requested the Depot Manager, CWC, Basti under whom he was posted to relieve him, in order to join at Nani, no heed was paid by the said authority.

So, he made a request to the Regional Manager (In charge) of the Corporation, Regional Office at Lucknow requesting therein to issue necessary directions to the Depot Manager, Basti for relieving him.

In view of said facts on 13.10.2015 a letter was issued by Regional Manager (In charge), CWC, Regional Office, Lucknow to Depot Manager, Basti directing that he may relieve the applicant/workman immediately who is working under him in order to enable him to join on the transferred post on 15.10.2015 otherwise in pursuance to letter dated 01.10.2015, if he is not relied in time in that condition if any claim is made by Nand Kishore then in that circumstance he (Depot Manager) shall be responsible.

In spite of the said letter the Depot Manager, CWC, Basti does not relieved him so workman made a written request dated 14.10.2015 (A-8) to the Depot Manager, CWC, Basti to relieve him from duty in order to enable him to join at the transferred place on 15.10.2015; but, he was not relieved by the Depot Manager, Basti.

Thereafter, a letter dated 16.01.2016 (A-11) has been issued by the Sr. Asstt. Manager (Admin), on behalf of the Regional Manager, CWC, Regional Officer, Lucknow to Depot Manager, CWC, Basti, relevant portion of the same is quoted as under:

"केन्द्रीय भण्डारगृह, बस्ती पर पदस्थ निम्न कर्मचारी क्षेत्रीय कार्यालय के आदेशों से अन्य केन्द्रों के लिए स्थानान्तरित है, उन्हें अभी तक स्थानान्तरित केन्द्रों के लिए आप के द्वारा कार्यमुक्त नहीं किया गया हैं

1. श्री ए0के0 सिंह, कनिष्ठ अधीक्षक, के०भ०, बस्ती से के०भ०, गोरखपुर

2. श्री छोटे लाल, भण्डार सहायक-1, के०भ०, बस्ती से के०भ०, शाहगंज

3. श्री शोभा राम, भण्डार सहायक-1, के०भ०, बस्ती से के०भ०, डुमरियागंज

4. श्री राम सजीवन यादव, भ0स0-1, के0भ०, बस्ती से के०भ०, गोरखपुर

5 श्री जन्द किशोर, भण्डार सहायक-1, के0भ०, बस्ती से के०भ०, नैनी (कनिष्ठ अधीक्षक पद पर पदोन्नति पर)

उपरोक्त कर्मचारियों के स्थानान्तरण के सम्बन्ध में आपको सलाह दी जाती है कि उन्हें दिनांक 22.01.2016 तक उनके स्थानान्तरित स्थान के लिए कार्यमुक्त कर दें यदि स्थानान्तरित कर्मचारियों को कार्यमुक्त नहीं किया जाता है तो दिनांक 22.01.2016 को अपराहन में स्टैण्ड रिलीव बिना किसी वार्तालाप के मान लिया जायेगा।"

On behalf of the claimant, it has been argued that after issuance/receiving of the said letter he got his ticket reserved (PNR No. 221423215) Train No. & Name 15004/Chauri Chaura Exp, in order to join at Naini (the said document has been annexed at annexure no. A-12 (not denied by the respondent)

Thereafter, on 22.01.2016 an order was passed by Sr. Asstt. Manager (Admin), on behalf of the Regional Manager, CWC, Regional Officer, Lucknow, reproduced hereunder:

"विषयः केन्द्रीय भण्डारगृह, बस्ती में स्थानान्तरित कर्मचारियों को कार्यमुक्त करने के सम्बन्ध में।

महोदय,

क्षेत्रीय कार्यालय के पत्रांक ए 3563 दिनांक 16.01.2016 का सन्दर्भ में, जिसके माध्यम से निम्न कर्मचारियाँ बने दिनांक 22.01.2016 तथा कार्यमुक्त हेतु निर्देश दिया गया था।

1. श्री एके सिंह, कनिष्ठ अधीक्षक, कैभ०, बस्ती से के गोरखपुर

2. श्री छोटे लाल, भण्डार सहायक- भ०, बस्ती से के, शाहगंज

3. श्री शोभा राम, भण्डार सहायक-1 के बस्ती से घुमरियागंज

4. श्री राम सजीवन यादव, भ. स. -1, बस्ती से के. भ०, गोरखपुर

5. श्री नन्द किशोर भण्डार सहायक बस्ती से के. भ०, नैनी (कनिष्ठ अधीक्षक पद पर पदोन्नति

पर)

उक्त पत्र के क्रम संख्या 05 श्री नन्द किशोर भण्डार सहायक जिन्हें पदोन्नति पर के जैसी पर कार्यभार ग्रहण था। नियमित कार्यालय के मेमोरेयन CWC/1-15(Prom)/Estt/2674 दिनांक 01.10.2015 (प्रति संसदद्वारा उन्हें यह सूचित किया गया था कि मां से दिनांक 15.10.2015 तक पदोन्नति पर कनिष्ठ अधीक्षक के पद पर कार राहण नहीं करते हैं तो उनके पदोन्नति को Foregone मान लिया जायेगा।

उक्त सन्दर्भ में निगमित कार्यालय से वार्ता की गई, जिसमें यह बताया गया कि श्री नन्द किशोर भण्डार सहायक-1, के. भ., वस्ती अब पदोन्नति पर कनिष्ठ अधीक्षक के पद पर कार्यभार ग्रहण नहीं कर सकते हैं। अतः श्री किशोर भण्डार सहायक को पदोन्नति पर कार्यभार ग्रहण करने हेतु केन्द्रीय भण्डारगृह, नैनी के लिए कार्यमुक्त न किया जाये"

Accordingly, on behalf of the workman the first argument, which was submitted that after the order dated 30.07.2015 by which he was promoted to the post of Jr. Suptd and posted/transferred to Naini, he made representations dated 13.08.2015 and 26.09.2015 to the Regional Manager, CWC, Regional Office, inter alia stating therein that looking into his family condition his place of transfer may be changed from Nani to Gorakhpur; however, no heed was paid. The said action on the part of the Regional Manager is arbitrary in nature because in the past it is the practice in the corporation that if a person is promoted, by way of transfer unable to join at transfer place due to certain personal problem then on his request the place of posting was changed and posted at the place of his choice. However, in the present case without any justified reasons, the applicant's request has not been considered, so the said action on the part of Regional Manager is arbitrary in nature, and violative of the Article 14 of the Constitution of India.

Next argument raised on behalf of the workman is that after receiving the letter dated 01.10.2015 by which it is stated that if the claimant fails to join his duties in pursuance to his promotion order dated 30.07.2015 by which he has been transferred/promoted on the post of Jr. Suptd. at Nani it will be presumed that he is not interested to join his promotion and his promotion shall be treated as foregone and he shall not be considered for promotion for a further period of two years for the date of issued of said order dated 30.07.2015.

He made a request to the Depot Manager, CWC, Basti to relieve him from Basti in order to join at Nani; however, the said authority did not relieve him, so without being relieved he cannot join his duties at Naini.

It has also been argued on behalf of the workman that on his request for relieving form Basti to Nani in order to join his promotion post at Naini, Sr. Asstt. Manager, on behalf of Regional Manager, CWC, Regional Office, Lucknow wrote a letter dated 16.01.2016 to relieve him by 22.01.2016 otherwise it would be deemed that the applicant will be stand relieved without any further conversation in the matter and after receiving the said order he immediately got reservation (A-12), which has been admitted by the respondent; however, when the said fact came to the knowledge of the concerned authority the impugned order dated 22.01.2016 has been passed on the ground that the claimant has not joined the promotion post in pursuance to order dated 15.10.2015 so as per the said order the workman has foregone his promotion and he should not be relieved from Basti for joining at CWC, Nani the same has been passed without giving any opportunity to the claimant to put forward his case in order to explain that why he is not able to join at Naini, as such, the impugned orders dated 01.10.2015 and 22.01.2016 are illegal and arbitrary, in violation to the principles of natural justice, liable to be set aside; and the workman; is entitled for the reliefs as claimed by him in the instant matter.

Submission on behalf of the respondent:

On behalf of the management, Sri Virendra Mishra, advocate argued that Nand Kishore is an employee of Central Warehousing Corporation (hereinafter referred to as Corporation) and his service condition are regulated and governed under Service Regulations known as "Central Warehousing Corporation (Staff) Regulations 1986" (hereinafter referred to as Serviced Regulations), framed by the Corporation in exercise of powers conferred to it under section 42 of Warehouse Corporation Act, 1962 with the prior approval of the Central Government. The procedure from recruitment/appointment up to retirement of employees/officers including their seniority promotions, transfer, disciplinary action and conduct, have been provided in the Regulations which are binding, and they are to be followed strictly.

He further argued that the workman, Nand Kishore along with 104 WAG-I, was promoted on the post of Jr. Suptd. in the pay scale of Rs. 11200-30600/-; accordingly, an order dated 30.07.2015 was issued with the approval of the Competent Authority, by the Asstt. General Manager (Estt) of the Corporation, New Delhi in which name of the claimant finds place at serial no. 80.

Thereafter on 04.08.2015 Sr. Asstt. Manager (Admin) issued an office order that the workman/Nand Kishore to join at Naini on the promotion post.

However, he does not join his duties at Naini with oblique motive and purpose.

So, on 01.10.2015 an order was issued by the Asstt. General Manager (Establishment), New Delhi to the workman/Nand Kishore WAG-I, CWC, Basti that in pursuance to order dated 30.07.2015 he shall join transferred place i.e. Naini by 15.10.2015, failing which it would be presumed that he is not interested to join on his promotion post and his promotion will be treated as foregone and he will not be considered for promotion for a further period of two years from the date of said order dated 30.05.2015.

Sri Virendra Mishra further argued that on 13.10.2015 letter was issued by the Regional Manager (In charge), CWC, Regional Office, Lucknow to Depot Manager, CWC, Basti to relieve workman, Nand Kishore immediately in order to join his transfer post otherwise in pursuance to order dated 01.10.2015 by which it is directed that if the workman does not join his duties by 15.10.2015 it will be presumed that the workman has foregone his promotion, the same reads asunder:

"पत्रांकःक्षे0का00/प्रशासन भ०स०-1/2015/ दिनांक 13.10.2015

सेवा में,

विषयः श्री नन्द किशोर, भण्डार सहायक को पदोन्नति पर कार्यभार ग्रहण करने हेतु तुरन्त प्रभाव से कार्यमुक्त करने के सम्बन्ध में।

भण्डार प्रबन्धक,

केन्द्रीय शण्डारगृह, बस्ती।

महोदय,

निगमित कार्यालय ज्ञापन संख्या CWC/I-JS (Prom.)/Estt/267A दिनांक 01.10.2015 का सन्दर्भ लें, जिसके द्वारा श्री नन्द किशोर, भण्डार सहायक I को कनिष्ठ अधीक्षक के पद पर पदोन्नति पर कार्यभार ग्रहण दिनांक 15.10.2015 तक न करने की स्थिति में Foregone मान लिया जायेगा

उपरोक्त विषय में आपको निर्देश दिया जाता है कि श्री नन्द किशोर, भण्डार सहायक-I, केन्द्रीय भण्डारगृह, बस्ती का तुरन्त प्रभाव से कार्यमुक्त कर दें, जिससे वे पदोन्नति पर दिनांक 15.10.2015 तक अपनी योगदान आख्या नये तैनाती स्थल केन्द्रीय भण्डारगृह, नैनी पर प्रस्तुत कर सके समय पर कार्यमुक्त न करने की स्थिति में श्री नन्द किशोर द्वारा कोई भी दावा किया जाता है तो उसकी पूर्ण जिम्मेदारी आपकी होगी

भवदीय,

(एस0के0 श्रीवास्तव)

क्षेत्रीय प्रबन्धक (प्रभारी)"

In spite of the said fact claimant/workman does not join at the transfer place i.e. Naini, so, on 21.01.2016 a letter was issued to Nand Kishore by Asstt. General Manager (Establishment) of Corporation, which reads as under:

"Shri Nand Kishore, WAG-I, CW, Basti may refer to C.O. Memorandum No CWC/I-JS (Prom.)/Estt. dated 1/10/2015 wherein he was advised to join his duty as Jr. Supdt. by 15/10/2015 otherwise his promotion to the post of Jr. Supdt who be treated as foregone without any further reference to him.

In this connection, it has been observed that he has not joined his duty a Jr. Supdt. so far. The Competent Authority has therefore treated his promotion to the post of Jr. Supdt., as foregone an. as per rules he will not be considered for further promotion for a period of two years from the date of issue of Office Order No. CWC/I-JS(Prom.//Estt./688A dated 30/7/2015."

Accordingly, Sri Virendra Mishra learned counsel for the respondent submits that after issuance of letter dated 21.01.2016 (Annexure no. 5 to the written statement), the workman has neither sought any time extension for joining nor brought to the notice of headquarter that Depot Manager, CWC, Basti is not relieving him; rather the defence which has been taken by the claimant for non-joining at Naini is false and fabricated one, as such, the case of the workman is based on incorrect and wrong facts, so he is not liable for relief and present case be dismissed.

Evidence led by the parties:

After exchange of the pleadings between the parties in the present case in addition to the documentary evidence.

Oral evidences on behalf of the claimant (examination-in-chief) has been filed by way of affidavit dated 21.05.2018, cross-examined on 30.10.2019.

On behalf of the respondent (examination-in-chief) of Sri Rajeev Bansal who was posted at that relevant time as Regional Manager, CWC, N. Delhi dated 19.12.2019 has been filed on affidavit, cross-examined on 28.10.2020.

Findings & conclusion:

I have heard the learned counsel for the parties and gone through the record.

Taking into the consideration the pleadings of the parties as well as the documentary and oral evidence as led by the parties, it is not in dispute that the workman/Nand Kishore is an employee of CWC, while he was working as WAG-I at CWC, Basti under Depot Manager, and with the approval of the Competent Authority by an order dated 30.0.2015 passed by the Asst. General Manager (Estt.) he along with 104 were promoted to the post of Jr. Suptd. on the pay scale of Rs. 11200 – 30600/- (IDA) w.e.f. the date they took over the charge of the post, in the said list the name of the workman find place at serial no. 80.

Thereafter on 04.08.2015 an office order was passed by Sr. Asstt. Manager (Admin) in pursuance to the order dated 30.07.2015 thereby directing Nand Kishore to join at Naini on the promotional post of Jr. Suptd.

However, after passing of the order dated 04.08.2015, workman made a representation dated 13.08.2016 and 26.09.2015 (Annexure no. A-3 & A-5) to the Regional Manager, CWC, Regional Office, Lucknow requesting therein that his place of posting may be changed, keeping into consideration his family circumstances and in the said representations it is also stated that in the past it is the practice in the Corporation that if an employee who has been transferred/promoted then on his request his choice posting is given. The said representation of the petitioner was rejected by order dated 01.10.2015, passed by Asst. General Manger, (Estt.), New Delhi.

In view of the above said facts, argument raised on behalf on the point in issue that action/order dated 01.10.2015 is illegal and arbitrary is incorrect and got no force; rather contrary to law as laid down by Hon'ble Apex Court in the case of *Gujrat Electricity Board and Ors. V. Atmaram Sungomal Poshani AIR 1989 SC 1433*, the relevant paragraph is quoted hereunder:

> *"4. Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the Public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules as has happened in the instant case, the respondent lost his service as he refused to comply with the order of his transfer from one place to the other."*

Thus, the argument, in question advanced on behalf of the applicant, is rejected.

Next point to be considered that whether order dated 01.10.2015 and order dated 22.02.2016 are illegal order or not; and if they are illegal, what relief workman is entitled?

After hearing on the points in issue and taking into consideration the material on record the position which emerges out is that after passing of order dated 30.07.2015 when the applicant did not join on the promoted post, an order/letter dated 01.10.2015 has been issued by the Asstt. General Manager (Estt) of the Corporation, (N. Delhi) inter alia stating therein that workman had been promoted vide order dated 30.07.2015, the Competent Authority has desired that he to join his duties as Jr. Suptd. by 15.10.2015, failing which it would be presumed that he is not interested in joining on promotion post and his promotion be treated as foregone and he will not be considered for promotion for a further period of two years from the date of issue of letter dated 30.07.2015.

After issuance of the said letter on 01.10.2015 a letter has been written by the General Manager (In charge) of the Corporation, Lucknow to Depot Manger, CWC, Basit under whom the workman was posted to relieve him in order to submit his joining at CWC, Nani in pursuance to order dated 15.10.2015 (A-7).

Thereafter, the workman has written a letter dated 14.10.2015 (A-8) to the Depot Manager, CWC, Basti to relieve him in order to join his duties at Naini; however, the said authority, under whom he was posted did not relieve him which is evident form the letter dated 16.01.2016 written by Sr. Asstt. Manager, CWC, Regional Office, Lucknow to Depot Manager, CWC, Basti (A-11) in which it is mentioned that he may relieve shri Nand Kishore by 22.01.2016 in order to join at transferred place otherwise from afternoon of 22.01.2016 he will be stand relieved (A-11). Moreover, the workman has also got a ticket reservation to join at the promotion place (A-12) and the said document, A-12 filed on behalf of the workman has not disputed by the management.

However, on 22.01.2016, a letter was issued by Sr. Asstt. Manager (Admin) on behalf of Regional Manager, CWC, Lucknow to Depot Manager, CWC, Basti thereby directing not to relieve Nand Kishroe in order to join his duties at transferred place because in pursuance to order dated 01.10.2015, as he has not joined his promotion post by 15.10.2015 his promotion has to be treated as foregone.

It is late in a day to dispute that if a person who has been transferred from one place to another place than before joining the transfer post he has to give charge of the post from where he is transferred to the new incumbent who took the charge or to the authority under whom he is working, only then he can proceed to join at transfer place.

In the present case, the admitted position as per the material on record is that the workman/Nand Kishore was working at Basti under Depot Manager, CWC, Basti when the order dated 30.07.2015 and 01.10.2015 have been passed thereafter had made request to the said authority to relieve in pursuance to order dated 01.10.2015 but he was not relieved, which is evident from the letter dated 16.01.2016.

On behalf of the respondent in order to support its case evidence of Sri Rajeev Bansal on affidavit in the form of evidence has been filed (examination-in-chief) [affidavit (M-8)] and during his cross-examination on 28.12.2020 he was shown document A-11 that is letter dated 16.01.2016 written by Sr. Manager (Amin), CWC, Lucknow to Depot Manager, CWC, Basti by which a direction has been

issued to relieve Sri Nand Kishore in order to join his duties in transfer place, the said document was admitted by him, which itself goes to show that by that date the workman/Nand Kishore has not been relieved form Basti by Depot Manager, Basti under whom he was working.

Further, Sri Rajeev Bansal in cross-examination has submitted as under:

> *"मुझे कोई specific instance याद नहीं है लेकिन ऐसा होता रहा है कि transferred official को बिना फॉर्मल चार्ज दिए instantly relieve नई posting join करने के लिए relieve कर दिया जाता है स्वयं कहा वर्तमान केस में transfer, promotion पर था लेकिन संबंधित कर्मचारी स्वयं ही transfer posting पर जाना नहीं चाहते थे पेपर नंबर A-13 की सत्यता भी साक्षी ने स्वीकार की इस पर एग्जिट EXW-2 डाला गया*
>
> *अगर charge है तो taking over एवं हैंडिंग ओवर की प्रतियां करनी पड़ेगी लेकिन यदि कोई कर्मचारी जानबूझकर charge नहीं देना चाहता है तो एक committee बनाकर हम in-absence या उसके presence में भी किसी कर्मचारी को charge दिया जाता है Instant relieving के केस में यही किया जाता है"*

Thus, keeping in view the above said fact and letter dated 16.10.2016 (A-11) written by Sr. Asstt. Manager to Depot Manager, CWC, Basti to relieve the workman w.e.f. 22.01.2016 otherwise he will be stand relieved from afternoon of 22.01.2016 goes to prove that there is no fault or illegality on the part of the workman, Nand Kishore, not to join his duties on the transfer post in pursuance to the promotion order dated 30.07.2015 or letter dated 01.10.2015 by which he was directed that he has to join the promotion post by 15.10.2015.

As during the course of the argument on behalf of the respondent, Sri Virendra Mishra has submitted that the workman, Nand Kishore with oblique motive and purpose with the connivance of Depot Manager who did not relieve him, has not joined his duties at transferred post in pursuance to the order dated 01.10.2015, so, the order dated 01.10.2015 and 22.01.2016 are perfectly valid as per the facts case of the case, as there is no pleading in this regard in the written statement or documentary/oral evidence.

So a quarry has been put that as per the arguments advanced on behalf of the respondent, if Nand Kishore with oblique motive and purpose with the connivance of Depot Manager who did not relieve him than what action has been taken against the Depot Manager with whose connivance the workman Nand Kishore did not join at transfer post.

Sri Virendra Mishra, learned counsel for the respondent very fairly admits that as per his information/instruction received to him no action has been taken against the Depot Manager, CWC, Basti.

Keeping in view the above said facts as well as per the material on record after passing of order of promotion dated 30.07.2015 whereby the workman has been promoted to the post of Jr. Sutd. and posted at Nani and order dated 01.10.2015 by which workman was directed to join by 15.10.2015, was not been relieved by Depot Manager, CWC, Basti till 22.10.2016 and from the cross examination of Sri Rajeev Bansal (reproduced hereinabove) if a person is not relieved, he may be deemed automatically relieved, the said position only comes into operation in the present case as per letter dated 16.01.2016 on 22.01.2016, so, the order dated 15.10.2015 and 22.01.2016 are contrary to the settled principles of law that a person cannot join on transfer post unless and until he has been relieved form the post from where he has been transferred.

Moreover, from the material placed on record (oral evidence of Sri Rajeev Bansal) by the management the position which emerges out is that if an employee of a Corporation is transferred and he does not give the charge after transfer then in that circumstances a Committee has been constituted and in his absence or his presence the charge is given to another employee and he is instantly relieved.

In the instant matter, the said procedure is not being followed, because if as per the case of the respondent the workman, Nand Kishore does not willfully handed over the charge on the post in question that the above said procedure has to be followed; but the same has not been done; rather the fact are otherwise that he is not relieved from Basti to Naini, where the claimant has been transferred which is evident from the letter dated 16.01.2016, so, the order dated 22.01.2016 is contrary to the laws as well as the procedure/practice which is followed in the Corporation. Thus, the said acation on the part of respondent is contrary to law.

Because in the case of *Rajendra Upadhyay v. The State of Bihar & others MANU/BH/1489/2015*; wherein Hon'ble High Court of Patna has held as under:

> *"6. In view of Government Instruction itself it is evident that relieving order after issuance of transfer was mandatory. Once there was mandatory provision for issuance of relieving order it can be considered that in absence of relieving order the petitioner rightly continued in the office of Respondent No. 5. The stand of the petitioner that he was denied joining in absence of relieving order is further corroborated from Annexure '3' to the writ petition which was issued by the Executive Engineer, Minor Irrigation Division, Siwan whereby in absence of relieving order the petitioner was not allowed joining. Joining of the petitioner was accepted only in view of Annexure-'4' to the writ*

petition. It appears that in exceptional manner in absence of relieving order the petitioner, in the facts and circumstances, was allowed to join his new place at Siwan. Accordingly, the Court is of the considered opinion that the petitioner may not be denied his full salary for the period claimed in the present writ petition. Accordingly, in view of the facts and circumstances the writ petition stands allowed. The order contained in Annexure-'6' is set aside with a direction to the Respondents to take all steps to pay the due salary of the petitioner from 13.8.1996 to 18.12.1998 within a period of eight weeks from the date of receipt/production of a copy of this order. The writ petition stands allowed."

In additional to the above said fact the order 22.01.2016 has been passed without giving any opportunity of hearing to the petitioner as such the same is in violation of the principles of natural justice.

It is well settled that denial of natural justice in a modern society is not acceptable. India has a progressive society and a modern constitution. Natural justice is a parameter of all the modern constitution of the world.

It is difficult to define natural justice. I find that Black J has most aptly described it as" Natural justice understandably meant no more than justice without the adjective" *(Green V Blake, [1948]IR 242).* Justice Krishna *Iyer in Mohinder Singh Gill v The Chief Election Commissioner: (1978) 1 SCC 405* has traced its root in Kautilya's Arthasastra in following terms,

"Indeed, from the legendary days of Adam--and of Kautilya's Arthasastra --the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

In the case of *Bhagwan Shukla, v. Union of India and others 1994 (6) SCC 154* wherein paragraph no.3 (relevant portion) held as under:

"The appellant has obviously been visited with civil consequence but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being hears. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequence should be passed without putting the employee concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant."

Further, in the case of *Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors. JT 2012 (10) SC 476*, Hon'ble the Supreme Court in paragraph no.3 held as under:

"The principles of natural justice embody the right to every person to represent his interest to the court of justice. Pronouncing a judgment which adversely affects the interest of the party to the proceedings who was not given chance to represent his/its case is unacceptable under the principles of natural justice."

For the foregoing reasons the orders dated 01.10.2015 and 22.01.2016 are quashed and the respondents are directed to post the workman at Naini within two months from the date of receipt of certified copy of this order and if the post is not vacant at Nani then at some other place, preferably nearby Gorakhpur.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1297.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एग्जीक्यूटिव डायरेक्टर-एसेट मैनेजर, मेसर्स ओएनजीसी लिमिटेड, मेहसाना (गुजरात); मेसर्स चौधरी ट्रांसपोर्ट कंपनी, मेहसाना; मेसर्स ग्लोब इकोलॉजिस्टिक्स प्राइवेट लिमिटेड, अहमदाबाद (गुजरात) के प्रबंधतंत्र के संबद्ध नियोजकों और जनरल सेक्रेटरी, ओएनजीसी एडमिनिस्ट्रेटिव एंड टेक्निकल कॉन्ट्रैक्ट वर्कर्स

एसोसिएशन, अहमदाबाद (गुजरात) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 28/2018) को प्रकाशित करती है।

[सं. L-30011/63/2017-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1297.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (28/2018) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Executive Director-Asset Manager, M/s ONGC Ltd., Mehsana (Gujarat); The Chaudhary Transport Company, Mehsana (Gujarat) and M/s Golbe Ecologistics Pvt. Ltd., Ahmedabad and The General Secretary, ONGC Administrative and Technical contract Workers Association, Ahmedabad (Gujarat).

[No. L-30011/63/2017-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, AHMEDABAD

Present: Sunil Kumar Singh-I,
Presiding Officer, CGIT cum Labour Court,
Ahmedabad,
Dated 03rd October, 2022

Reference: (CGITA) No- 28/2018

1. The Executive Director, Asset Manager,
M/s. ONGC Ltd.,
KDM Bhavan, Palavasna,
Mehsana-384003.

2. The Head of Logistic,
M/s. ONGC Ltd.,
KDM Bhavan, Palavasna,
Mehsana-384003.

3. The Chaudhary Transport Company,
A/A2, Shop No. 234, Joyos Hub Town,
Mehsana(Gujarat)-384002.

4. M/s. Globe Ecologistics Pvt. Ltd.,
17, Transport Nagar, Narol,
Ahmedabad-382405... . First Parties

V

The General Secretary,
ONGC Administrative And Technical
Contract Workers Association,
B/144, Sarasvatinagar, IOC Road,
Chandkheda, Ahmedabad-382424 .... Second Party

Adv. for the First Parties : Shri K. V. Ghadia
Adv. for the Second Party : Shri P. S. Parmar

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/63/2017–IR(M) dated 16.04.2018 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand of General Secretary, ONGC Administrative & Technical Contract Workers Association, Ahmedabad to give permanent status of ONGC, Mehsana with similar wages and other benefits of ONGC which are been paid to the permanent workmen to Shri Kamlesh Navik and 25 others (list enclosed) working as a drivers, slingers, cleaners and helpers under various contractors engaged by the Executive Director- Asset Manager, ONGC Ltd., Mehsana from the date of their respective original joining is legal, fare and justified? If yes, then what relief the list of 26 workmen (Shri Kamlesh Navik and 25 others) are entitled to and what other directions are necessary in this matter?"

1. Today matter is called out. Shri K. V. Gadhia & Shri M. K. Patel Ld. Advocates are Present for the First Party and Shri P. S. Parmar, representing second party the General Secretary, ONGC Administrative & Technical Contract Workers Association, Ahmedabad (workmen Shri Kamlesh Navik & 25 others) filed withdrawal pursis vide Exhibit-10 and prayed for withdrawal of the reference. Withdrawal is not opposed by First Party. The Second party is permitted to withdraw the reference as prayed for.

2. Thus the reference is finally disposed of as withdrawn.

Therefore, the reference is disposed of as withdrawn by the second party union/workmen.

Let two copies of Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-1, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1298.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम, अजमेर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके श्री राकेश शर्मा, अजमेर के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, अजमेर के पंचाट (संदर्भ सं. सी.आई.टी.आर. 10/19) को प्रकाशित करती है।

[सं. Z-16025/04/2022-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1298.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CITR 10/19) of the Industrial Tribunal/Labour Court, Ajmer now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Life Insurance Corporation of India, Ajmer and Shri Rakesh Sharma, Ajmer.

[No. Z-16025/04/2022-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण, अजमेर

पीठासीन अधिकारी– रामेश्वर प्रसाद चौधरी, आर.एच.जे.एस

प्रकरण संख्या– सी.आई.टी.आर. 10/19

रेफरेंस संख्या– ए जे–/2/2/2019 –आई आर दिनांक 07.10.2019

श्री राकेश शर्मा पुत्र श्री रामप्रसाद शर्मा 63 तिवारी मोहल्ला हिंगोनिया,

तहसील सरवाड जिला अजमेर (राज.) .....पार्थी

बनाम

1–वरिष्ठ मंडल प्रबंधक (अनुशासनात्मक प्राधिकारी)
भारतीय जीवन बीमा निगम, मंडल कार्यालय,

जीवन प्रकाश रानाडे मार्ग, अलवर गेट, अजमेर,

2–मंडल प्रबंधक, भारतीय जीवन बीमा निगम,
मंडल कार्यालय, जीवन प्रकाश रानाडे मार्ग,
अलवर गेट, अजमेर,

3–शाखा प्रबंधक, भारतीय जीवन बीमा निगम,
शाखा कार्यालय आनंद प्लाजा, कोर्ट केंपस के सामने,
केकडी जिला अजमेर ....अप्रार्थीगण

उपस्थिति

प्रार्थी की ओर से : श्री मनीष कुमार खंडेलवाल, अधिवक्ता।
अप्रार्थीगण की ओर से : श्री कृष्णावतार खंडेलवाल, अधिवक्ता।

–: अधिनिर्णय :–

दिनांक 21.6.2022

1. भारत सरकार श्रम एवं रोजगार मंत्रालय उप मुख्य श्रम आयुक्त केंद्रीय श्रम व सदन हरिभाउ उपाध्याय नगर विस्तार योजना पुष्कर रोड, अजमेर की ओर से दि.7.10.19 को रेफरेंस इस आशय का प्राप्त हुआ कि:–

> 2. **Whether Shri Rakesh Sharma s/0 Shri Ram Prasad Sharma is a workman as defined under Section 2(s) of the Industrial Dispute Act, 1947 ? If yes, then whether action of management of Sr. Divisional Manager, LIC of India, Divisional Office, Ajmer in terminating Shri Rakesh Sharma s/o Sh. Ram Prasad Sharma is legal and justified? If not, then to what relief Shri Rakesh Sharma, s/o Shri Ram Prasad Sharma is entitiled and from which date?"** जिस पर रेफरेंस दर्ज रजिस्टर किया जाकर उभयपक्षकारान् को नोटिस जारी किये गये ।

3. प्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम इस आशय का प्रस्तुत किया गया कि प्रार्थी की नियुक्ति भारतीय जीवन बीमा निगम के केकडी स्थित कार्यालय में बीमा प्रतिनिधि के रूप में दि.11.4.12 को हुई थी । पार्थी बतौर बीमा प्रतिनिधि प्रथम दिन से ही सभी आदेश निर्देश के साथ पूर्ण निष्ठा एवं ईमानदारी से कार्य करता रहा जिस पर प्रार्थी की एजेंसी की कार्य अवधि दि.1.9.15 को आगामी तीन वर्ष के लिए बढा दी गयी । प्रार्थी को मिथ्या आधारों पर आरोपित किया जाकर विधि के प्रतिकूल जांच कार्यवाही कर दि.26.4.16 को प्रार्थी की सेवा समाप्ति का आदेश जारी कर दिया गया । अप्रार्थीगण द्वारा प्रार्थी को दि.5.10.16 को कारण बताओ नोटिस जारी कर श्रीमति गलकू देवी के बीमा प्रस्ताव फार्म में आयु संबंधी जानकारी एवं दस्तावेज तथा गोपनीय रिपोर्ट बाबत् स्पष्टीकरण मांगा गया जिसका प्रत्युत्तर प्रार्थी द्वारा दि. 25.10.17 को प्रेषित कर निवेदन किया गया कि बीमार्थी द्वारा उपलब्ध कराये गये दस्तावेजों के आधार पर प्रार्थी द्वारा गोपनीय रिपोर्ट तैयार कर कार्यालय में जमा करायी गयी जिस पर गोपनीय रिपोर्ट के साथ प्रस्तुत दस्तावेजों से संतुष्ट होकर गलकू देवी की बीमा पालिसी जारी की गयी । अप्रार्थीगण द्वारा प्रार्थी पर लगाये गये आरोपों के संबंध में जांच अधिकारी नियुक्त कर जांच कार्यवाही की गयी जांच के दौरान प्रार्थी ने बचाव में सलाहकार हेतु सहायक की मांग की जो अस्वीकार कर दी गयी । जांच अधिकारी द्वारा प्रार्थी को दस्तावेज उपलब्ध नही कराये गये। जांच अधिकारी द्वारा मन–माने तौर पर मिथ्या एवं दुर्भावना पूर्ण जांच कार्यवाही कर संपूर्ण कार्यवाही की गयी जो विधि विरूद्ध है । जांच अधिकारी द्वारा प्राथी की ओर से प्रस्तुत दस मृत्यु दाव शीघ्र दावे होने के कारण प्रार्थी की कार्यशैली पर संदेह किया गया । प्रार्थी के विरूद्ध आरोपित अपराध साबित नही होने के बावजूद भी जांच अधिकारी ने निहित स्वार्थ के कारण दस्तावजों के विपरीत जाकर जांच कार्यवाही निष्पादित की है । जांच अधिकारी की जांच रिपोर्ट के विरूद्ध प्रत्युत्तर प्रस्तुत करने का अवसर नही दिया गया । बल्कि दुर्भावना वश एजेंसी निरस्त कर दी गयी और बदनीयती से दि. 26.4.18 को प्रार्थी की सेवा

समाप्ति के आदेश पारित कर दिये गये । अंत में उनकी ओर से अभिवचन किया गया कि स्टेटमेंट ऑफ क्लेम स्वीकार किया जाकर अप्रार्थीगण द्वारा जारी आदेश दि. 26.4.18 से की गयी प्रार्थी की सेवामुक्ति को अनुचित अवैध करार दिया जावे तथा प्रार्थी को सेवामुक्ति की दिनांक से समस्त कमीशन राशि भत्ते एवं परिलाभ दिलाये जावे तथा प्रार्थी को पुनः सेवा मं बहाल करने का आदेश पारित किया जावे । प्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम के समर्थन में शपथ पत्र भी प्रस्तुत किया गया है।

4. अप्रार्थीगण की ओर से जवाब स्टेटमेंट ऑफ क्लेम इस आशय का प्रस्तुत किया गया है कि रेफरेंस संबंधी कार्यवाही न्यायालय द्वारा विचारण योग्य नही है । प्राथी व अप्रार्थी के मध्य नियेाजक व नियोक्ता का कोई संबंध नही है । प्रार्थी व अप्रार्थी के मध्य बीमा प्राप्त करने एवं उसकी एवज में कमीशन देने की एक संविदा मात्र थी जिसके आधार पर प्रार्थी को अनुज्ञा पत्र जारी कर एजेंट नियुक्त किया गया था। निगम द्वारा एजेंट के माध्यम से उपलब्ध जानकारी एवं दस्तावेज तथा गोपनीय रिपोर्ट को प्राथमिक रूप से सत्य मानते हुए संविदा दी जाती है । उक्त जानकारी एवं रिपोर्ट गलत पाये जाने पर धोखाधडी एवं तथ्यों को छुपाकर की गयी पालिसी पर अनावश्यक भुगतान करना पड रहा है । पार्थी को अप्रार्थी द्वारा दि.11.4.12 को एजेंट नियुक्त कर व एजेंसी कोड आवंटित कर लाइसेंस की अवधि तीन वर्ष होना व 2015 में फिर बढाये जाना विविादित नही है। प्रार्थी द्वारा मृतका गलकू की बीमा पालिसी की अनुशंसा किये जाने के पूर्व उसके स्वास्थ्य, आयु के संबंध में भौतिक सत्यापन नही किया गया तथा तकनीकी दस्तावजों की आड लेकर गलत तथ्यों की अनुशंसा कर उसके हक में पालिसी जारी करवायी । इस प्रकार प्रार्थी द्वारा अप्रार्थी संस्थान के हितों को क्षति कारित कर नुकसान पहुंचाया जो तथ्य सामने आने पर प्राकृतिक सिद्धांत के अनुसार कायवाही कर प्रार्थी को कारण बताओ नोटिस जारी किया गया । अप्रार्थी द्वारा जांच अधिकारी नियुक्त कर प्रार्थी को बचाव हेतु समुचित अवसर उपलब्ध कराया गया था । जांच अधिकारी के समक्ष प्रार्थी द्वारा बचाव में सलाहकार की मांग नही की गयी । जांच के दौरान समस्त दस्तावजो का अवलोकन कराया गया था । प्रार्थी द्वारा किसी प्रकार के दस्तावेज की मांग नही की गयी । अभिकर्ता की अनुशंसा को प्राथमिक रूप से सही मानकर बीमा प्रस्ताव को निगम द्वारा स्वीकार किया जाता है । दोषी पाये जाने पर प्रार्थी ने पूर्वाग्रह से ग्रसित होते हुए मान–माना व मिथ्या आक्षेप लगाया है । जांच कार्यवाही से संतुष्ट होकर प्रार्थी ने हस्ताक्षर किये थे । अभिकर्ता का उत्तरदायित्व है कि बीमार्थी की आयु , आय व स्वास्थ्य के संबंध में व्यक्तिगत सत्यापन कर अपनी अनुशंसा व गोपनीय रिपोर्ट देवें । प्रार्थी द्वारा बीमार्थी की आयु 55 वर्ष बताते हुए अनुशंसा की गयी है परंतु वास्तविक रूप से बीमार्थी को लाभ पहुंचाने के लिए प्रार्थी ने उसकी वास्तविक आयु कम या भौतिक सत्यापन नही किया। बीमार्थी की बीमा प्रस्ताव के समय आयु साठ वर्ष से अधिक थी। जांच अधिकारी द्वारा पूर्णतः निष्पक्ष होकर दस्तावेजों के आधार पर प्रार्थी को बचाव का समुचित अवसर देते हुए न्यायिक एवं विधिक प्रकिया अनुसार जांच कार्यवाही निष्पादित की गयी । प्रार्थी द्वारा जानबूझकर संस्थान के नियमों व हितों के विपरीत जानबूझकर बिना सत्यापन किये बीमार्थी को लाभ पहुंचाने के लिए जो कार्य किया है उसके लिये वह उत्तरदायी है । गलत अनुशंसा के कारण प्रार्थी द्वारा किये गये बीमे में से मृत्यु धारी शीघ्र दावे की श्रेणी में होते हुए प्रस्तुत हुए जो प्रार्थी के गैर जिम्मेदाराना कार्य को प्रकट करते है । प्रार्थी के विरूद्ध पारित आदेश औद्योगिक नियमों के प्रावधानों तहत नही आते । रेफरेंस न्यायालय द्वारा विचारणीय नही है। अंत में उन्होंने रेफरेंस खारिज कर निगम के हक में निर्णीत करने का अभिवचन किया है।

5. प्रार्थी की ओर से अपने मामले के समर्थन में ए डब.1 के रूपये में स्वयं प्रार्थी उपस्थित हुआ तथा दस्तावेजी साक्ष्य के रूप में प्रदर्श डब.1 लगायत डब.6 पेश कर प्रदर्शित कराये गये । अप्रार्थीगण की ओर से बचाव में एन ए डब.1 अशोक कुमार को पेशकर परीक्षित करवाया गया तथा प्रदर्श एम–1 दस्तावेज पेश कर प्रदर्शित करवाया गया ।

6. बहस उभयपक्षकारान् सुनी गयी । दौरान बहस विद्वान अधिवक्ता पार्थी की ओर से तर्क दिया गया कि प्रार्थी को दि. 11.4.14 को अप्रार्थीगण की ओर से विधि अनुसार प्रकिया अपनाकर एजेंट नियुक्त किया गया था । प्रार्थी अप्रार्थीगण का कर्मचारी है । प्रार्थी ने बीमार्थी गलकू देवी के

बीमा की जो अनुशंसा की तथा जो गोपनीय रिपार्ट प्रस्तुत की वह विधि अनुसार प्रस्तुत की गयी थी । गलकू देवी की उम्र साठ वर्ष से अधिक हो ऐसा कोई दस्तावेज अप्रार्थीगण की ओर से प्रस्तुत नही किया गया है । प्रदर्श डब.4 में बीमार्थी की आयु के संबंध में पेनकार्ड का विकल्प मौजूद है और प्रार्थी ने भी बोमार्था के लिए पेनकार्ड के आधार पर अनुशंसा की थी । प्रार्थी के विरूद्ध अप्रार्थीगण द्वारा की गयी विभागीय जांच गलत है । प्रार्थी ने युक्तियुक्त जांच कर सत्यापन कर दस्तावेजों के आधार पर पालिसी की अनुशंसा की थी । अप्रार्थीगण द्वारा प्रार्थी के विरूद्ध की गयी टर्मिनेशन की कार्यवाही प्राकृतिक न्याय के सिद्धांतों के विपरीत है । अंत में उन्होनें निम्न न्यायिक दृष्टांत का अवलंब लेकर स्टेटमेंट ऑफ क्लेम स्वीकार कर अप्रार्थीगण द्वारा पारित आदेश दि. 26.4.18 को अनुचित तथा अवैधनिक करार देने व प्रार्थी को पुनः सेवा में मय परिलाभ का आदेश पारित किये जाने का तर्क दिया है :–

1–2008 ए आई आर एस सी डबल्यू 2793 एस एल आई सी बनाम आर सुरेश

7. इसके विपरीत विद्वान अधिवक्ता अप्रार्थीगण की ओर से दौराने बहस जवाब स्टेटमेंट ऑफ क्लेम में वर्णित तथ्यों की पुनरावृत्ति करते हुए तर्क दिया गया कि प्राथी ने बीमार्थी गलकू देवी की पालिसी जारी करने के लिए जो अनुशंसा की थी तथा जो गोपनीय रिपोर्ट प्रस्तुत की थी वह तथ्यों को छुपाकर की गयी थी। प्रार्थी व अप्रार्थी के मध्य कर्मकार व नियोक्ता का संबंध नही है । प्रार्थी को कोई नियुक्ति पत्र अप्रार्थी द्वारा नही दिया गया । एजेंसी केवल तीन साल के लिए दी गयी थी । एल आई सी रेग्यूलेशन में एजेंट के टर्मिनेशन की प्रकिया दी गयी है जो अपनाते हुए प्रार्थी की एजेंसी टर्मिनेट की गयी है । बीमा धारक की आयु अनुशंसा के समय 65 वर्ष थी जबकि प्रार्थी द्वारा 55 वर्ष अंकित करत हुए रिपोर्ट प्रस्तुत की गयी थी जो कि पालिसी के कुछ समय बाद ही मृत्यु को प्राप्त हो गयी । बीमा धारी की आयु के संबंध में जो पेनकार्ड प्रस्तुत किया गया है वह उसी महीने का है जिस महीने पालिसी जारी की गयी थी । एजेंट से विभाग द्वारा गोपनीय रिपोर्ट इसलिए ली जाती है ताकि दस्तावेजों से हटाकर कोई गोपनीय बात हो वह प्रकट हो सके । परंतु प्रार्थी द्वारा बीमार्थी की आयु अधिक होने के बावजूद गोपनीय रिपोर्ट में आयु कम अंकित कर विभाग को नुकसान पहुंचाया है जिस पर विभाग द्वारा प्रकिया अपनाते हुए प्रार्थी की एजेंसो टर्मिनेट की गयी है । अंत में उन्होनें निम्न न्यायिक दृष्टांतों का अवलंब लेते हुए स्टेटमेंट ऑफ क्लेम खारिज करने का तर्क दियाः–

1–ए आई आर 1994 एस 1343 एम वेणुगोपाल बनाम डिवीजनल मैनेजर एल आई सी,

2–ए आईआर 1998 एस सी 327 एल आई सी बनाम राघवद्र शेषगिरी ।

8. उभयपक्षकारान् के तर्को पर मनन किया गया पत्रावली का ध्यानपूर्वक अवलोकन किया । उभयपक्ष द्वारा प्रस्तुत न्यायिक दृष्टांतों का ससम्मान् अध्ययन किया गया।

9. यहां यह उल्लेखित किया जाना उल्लेखनीय है कि यह प्रकरण दुराचरण की विभागीय जांच क आधार पर प्रार्थी की पदच्युति से संबंधित होने के कारण अप्रार्थी की ओर से प्रार्थी के विरूद्ध संपादित की गयी घरेलू जांच की निष्पक्षता एवं विधि सम्मतता के बिंदु को पहले तय किया जाना था परंतु आदेशिका दि. 2.9.20 के अनुसार अप्रार्थी की ओर से जवाब स्टेटमेंट ऑफ क्लेम पेश करने पर पत्रावली घरेलू जांच की निष्पक्षता को तय करने के बजाय सीधे साक्ष्य प्रार्थी में लगा दी गयी तथा घरेलू जांच की निष्पक्षता एवं वैधता को तय किये जाने के संबंध में किसी भी पक्षकार की ओर से कोई सुझाव या आपत्ति दर्ज नही करवायी गयी तथा दोनां पक्षों की ओर से साक्ष्य आने के पश्चात् दि. 22.2.22 की आदेशिका के अनुसार पत्रावली बहस अंतिम के लिए मुकर्रर कर दी गयी तत्पश्चात् दि. 13.5.22 की आदेशिका के अनुसार उभयपक्षकारान् ने घरेलू जांच की निष्पक्षता व शुद्धता विक्टीमाईजेशन के बिंदु सहित रेफरेंस को अंतिम रूप से निस्तारण किये जाने की सहमति दर्ज करवायी गयी । अतः उक्त रेफरेंस का अब निस्तारण किया जा रहा है ।

10. जहां तक इस प्रश्न का संबंध है कि प्रार्थी राकेश शर्मा धारा 2 (s) आई डी एक्ट 1947 के अनुसार कर्मकार की परिभाषा में आता है या नही ? इस बिंद पर विद्वान अधिवक्ता प्रार्थी की ओर से तर्क दिया गया है कि प्रार्थी की नियुक्ति अप्रार्थी के यहां लिखित परीक्षा के

आधार पर एजेंट के रूप में हुई थी तथा प्रार्थी धारा 2 (s) आई डी एक्ट 1947 के तहत परिभाषित कर्मकार की श्रेणी में आता है । अपने तर्को के समर्थन में उन्होनें न्यायिक दृष्टांत 2008 ए आई आर एस सी डबल्यू 2793 एस सी एल आई सी ऑफ इंडिया बनाम आर सुरेश का अवलंबन लेते हुए तर्क दिया कि प्रार्थी कर्मकार की श्रेणो में आता है । इसके विपरीत विद्वान अधिवक्ता अप्रार्थी की ओर से तर्क दिया गया कि प्रार्थी केवल मात्र एजेंट के रूप में नियुक्त किया गया था। वह अप्रार्थी निगम का स्थाई कर्मचारी नही था । कमीशन एजेंट के रूप में कार्य करता था जिसका कोई निश्चित वेतन भी नही था । अतः वह कर्मकार की श्रेणी में नही आता है ।

11. उभयपक्षकारान् के तर्को पर मनन किया पत्रावली का ध्यानपूवक अवलोकन किया । पत्रावली के अवलोकन से प्रकट होता है कि अप्रार्थी द्वारा जारी लैटर ऑफ अपाइंटमेंट दि.1.9.15 के अनुसार अप्रार्थी द्वारा प्रार्थी को उक्त अपाइटमेंट लैटर जारी कर सूचित किया गया है कि प्रार्थी का प्रार्थना पत्र स्वीकार कर प्रार्थी को दि. 1.4.15 से 31.3.18 तक की अवधि के लिए अप्रार्थी की ओर से इंश्योरेंस पेश करने के लिए एजेंट के रूप में अधिकृत किया गया है तथा प्रार्थी को एजेंसी कोड भी आवंटित किया गया है । साथ ही उक्त पत्र में प्रार्थी की मूल नियुक्ति दिनांकित 11.4.12 भी अंकित की गयी है । स्वयं अप्रार्थी न अपने जवाब स्टेटमेंट ऑफ क्लेम में स्वीकार किया है कि प्रार्थी को दि. 11.4.12 के जरिये अभिकर्ता नियुक्त किया गया था तथा उसके लाइसेंस अवधि निर्धारित की जाकर अभिकर्ता की एजेंसी पुनः 31.3.18 के लिए नवीनीकृत की गयी थी इस प्रकार अभिवचन व दस्तावेजों स प्रार्थी की अप्रार्थी के यहां अप्रार्थी की ओर से एल आई सी करने के लिए एजेंट के रूप में नियुक्त होना र्निविवादित है । प्रार्थी की ओर से प्रस्तुत न्यायिक दृष्टांत एल आई सी ऑफ इंडिया बनाम आर सुरेश वाले मामले में एल आई सी के डवलपमेंट ऑफीसर के टर्मिनेशन का मामला अंर्तग्रस्त था । जिसमें डवलपमेंट ऑफिसर को कर्मकार की श्रेणी में माना गया है । अतः उक्त न्यायिक दृष्टांत की रोशनी में तथा पत्रावली पर उपलब्ध दस्तावेज तथा दोनों पक्षों के अभिवचनों के अनुसार प्रार्थी राकेश शर्मा अप्रार्थी एल आई सी का धारा 2(s) आई डी एक्ट में परिभाषित कर्मकार की श्रेणी में आता है ।

12. प्रकरण में अब यह देखना है कि क्या अप्रार्थी विभाग द्वारा प्रार्थी राकेश शर्मा के विरूद्ध की गयी विभागीय जांच निष्पक्ष थी या नही ? इस बिंदु पर विद्वान अधिवक्ता प्रार्थी की ओर से तर्क दिया गया ह कि विभाग द्वारा प्रार्थी के विरूद्ध की गयी जांच कार्यवाही प्राकृतिक न्याय के सिद्धांतों के प्रतिकूल है । प्रार्थी द्वारा बचाव सलाहकार हेतु सहायक की मांग की गयी थी परंतु जांच अधिकारी द्वारा मांग स्वीकार नही की गयी जिस कारण प्रार्थी को मजबूरन स्वयं अपना बचाव करना पडा । जाच के दौरान प्रार्थी को दस्तावेज मात्र दिखाये गये थे, उनकी प्रतियां उपलब्ध नही करायी गयी थी । अप्रार्थी के नियमों के अनुसार मानक आयु प्रमाण की सूची में पेन काड को शामिल किया गया है तथा पेन कार्ड पर अंकित जन्मतिथि उम्र का मानक माना गया है । परंतु जांच अधिकारी द्वारा मन माने तौर से मथ्या एवं दुर्भावनापूर्ण जांच कर पेन कार्ड को जांच का हिस्सा नही बनाकर दूषित कार्यवाही की गयी है । जांच अधिकारी द्वारा प्रार्थी की ओर से प्रस्तुत दस मृत्यु दावे शीघ्र दावे मानते हुए प्रार्थी की कार्य शैली पर संदेह किया गया है जबकि उक्त मृत्यु दावे में से केवल दो दावे दुर्घटनाग्रस्त मृत्यु दावे थे शेष सिर्फ मृत्यु से उत्पन्न दावे थे । प्रार्थी के विरूद्ध आरोपित अपराध साबित नही होने के बावजूद भी जांच अधिकारी ने जो कि संस्थान के ही अधिकारी है तथा संस्थान में उनका निहित हित है । इस कारण उन्होनें दस्तावेजों से विपरीत जाकर दूषित कार्यवाही की है ।

13. इसके विपरीत विद्वान अधिवक्ता अप्रार्थी की ओर से तर्क दिया गया है कि प्रार्थी अभिकर्ता को पूर्ण निष्ठा से अप्रार्थी निगम का हित ध्यान में रखते हुए निगम को लाभ दिलाये जाने संबंधी कार्य किया जाना था । उसका उत्तरदायित्व था कि पालिसी प्राप्त किये जाने से पूर्व पालिसी होल्डर की आयु व स्वास्थ्य के बारे में व्यक्तिगत जानकारी करके सत्यापन करता । परंतु प्राथी ने ऐसा नही किया । अप्रार्थी निगम अपने एजेंट की गोपनीय रिपोर्ट पर विश्वास कर पालिसी जारी करता है पंरतु पार्थी द्वारा मृतक गलकू की बीमा पालिसी की अनुशंसा किये जाने से पूर्व उसके स्वास्थ्य आयु का भौतिक सत्यापन नही किया गया। बल्कि तकनीकी दस्तावेज की आड

लेकर बीमार्थी गलकू की आयु के संबंध में गलत तथ्यों की अनुशंसा कर उसके हक में गलत रूप से दो पालिसी जारी करवा ली । इस प्रकार प्रार्थी ने अप्रार्थी संस्थान को जानबूझकर क्षति व नुकसान पहुंचाया है । जिसकी जानकारी होने पर अप्रार्थी ने प्राकृतिक सिद्धांतों के अनुसार विभागोय जांच कर प्रार्थी की एजेंसी समाप्त की है जो बिल्कुल निष्पक्ष एवं उचित है ।

14. उभयपक्षकारान् के तर्को पर मनन किया पत्रावली का ध्यानपूर्वक अवलोकन किया । पत्रावली पर विभागीय जांच रिपोर्ट प्रस्तुत की गयी है । पत्रावली पर उपलब्ध अनुशासनात्मक कार्यवाही के संबध में अप्रार्थी के पत्र दि. 5.10.16 के अनुसार अप्रार्थी द्वारा प्रार्थी को गलकू देवी धाकड के मामले में प्रार्थी के विरूद्ध अनुशासनात्मक कार्यवाही करते हुए उसे कारण बताओ नोटिस जारी किया गया है । जिसमें अंकित किया गया है कि प्रार्थी द्वारा दि. 25.10.13 को श्रीमति गलकू देवी की पालिसी सं. 18808164 एवं 18808165 के संबंध में प्रस्तुत कांफीडेंशियल रिपोर्ट में बीमार्थी की आयु पचपन वर्ष अंकित की गयी है तथा बीमार्थी के सबंध में सभी सूचनायें सही होना अंकित किया गया है । निगम द्वारा उक्त दोनों पालिसियों के संबंध में डेथ क्लम प्राप्त किया गया है तथा साक्ष्य के अनुसार बीमार्थी की वास्तविक आयु साठ साल से कम नही थी इस प्रकार अप्रार्थी निगम द्वारा प्रार्थी को पंद्रह दिन का कारण बताओ नेाटिस देकर पूछा गया था कि क्यों न उसके उपर पेनल्टी लगायी जावे । उक्त कारण बताओ नेाटिस पर प्रार्थी की ओर से जो जवाब भेजा गया है वह पत्रावली पर उपलब्ध है जिसमें उसने अंकित किया है कि उसने गलकू देवी का बीमा किया था तब उसकी पनकार्ड से बीमा करवाया था । उस समय बीमा धारक स्वस्थ थी एवं बीमार नही थी । कुछ दिनों बाद बीमा धारक की मृत्यु हो गयी । अतः निवेदन है कि प्रार्थी व उसके परिवार को दृष्टिगत रखते हुए फिर से निगम की सेवा का अवसर दिया जावे । पत्रावली पर उपलब्ध जाच रिपोर्ट के अनुसार दि. 25.1.18 को जांच अधिकारी आर पी टांक, प्रस्तुति अधिकारी आनंद जसूदानी व आरोपित अभिकर्ता प्रार्थी राकेश शर्मा की उपस्थिति में जांच कार्यवाही आरंभ हुई है । जिसमें जांच अधिकारी द्वारा प्रार्थी को कारण बताओ नोटिस प्राप्त होने के संबंध में प्रश्न किया गया है जिसका उत्तर प्रार्थी ने इस प्रकार दिया है कि उसको दोनों कारण बताओ पत्र प्राप्त हो गये । जांच अधिकारी द्वारा अगला प्रश्न पूछा गया है कि पालिसी सं.188061664 व 188081665 में आयु के संबंध में गलत सूचना दिये जाने के कारण एवं आयु ग्यारह वष कम दर्शाये जाने से प्रस्ताव प्रस्तुत करते समय अयोग्य व्यक्ति का बीमा किया गया है जिसका एक वर्ष में दोनों पालिसीयां मृत्यु दावे में परिवर्तित हो गयी। पेनकार्ड के अनुसार पचपन वर्ष आयु दिखायी गयी है जबकि वोटर लिस्ट के अनुसार प्रस्तावक की आयु 66 वर्ष थी इस प्रकार बीमा देते समय आपने बीमित की आयु के बारे में जांच नही की जिसका प्रार्थी ने इसका उत्तर इस प्रकार दिया है कि जब फार्म भरा उस समय पेन कार्ड दिया गया था और पेन कार्ड के अनुसार आयु 55 वर्ष थी आयु के संबंध में पेन कार्ड प्रमाणित आयु प्रमाण होने से ज्यादा छानबीन नही को । जांच अधिकारी द्वारा प्रार्थी से यह भी प्रश्न पूछा गया है कि आपकी एजेंसी में दस मृत्यु दावे प्रस्तुत किये गये है और ये सभी शीघ्र दावे की श्रेणी में आते है इससे यह साबित होता है कि आप द्वारा सही जीवनों का चयन नही किया जा रहा है जिसका उत्तर प्रार्थी ने इस पकार दिया है कि उपरोक्त शीघ्र मृत्यु दावों में मात्र आठ जीवन है इनमें से दो जीवन पर दावे दुर्घटनावश हुए मृत्यु के कारण है । शेष साधारण मृत्यु के कारण दावे उत्पन्न हुए है । जांच अधिकारी द्वारा प्रार्थी से जांच के दौरान बचाव में कुछ कहना या कोइ दस्तावेज प्रस्तुत करने का अवसर दिया गया है जिसमें प्रार्थी ने बीमार्थी गलकू की आयु पेनकार्ड के आधार पर पचपन वर्ष अंकित करना बताते हुए कथन किया है कि यदि कोई गलती हुई है तो भविष्य में वह ध्यान रखेगा प्रस्तावक के सभी आयु प्रमाण पत्र देखकर ही प्रस्ताव भरेगा । दस्तावेजों के संबंध में प्रार्थी ने कथन किया है कि उसे और दस्तावेज पेश नही करने । उक्त जांच कार्यवाही के पश्चात् दि.26.4.18 को अप्रार्थी द्वारा प्रार्थी को एजेंसी टर्मिनेशन ऑर्डर जारी कर प्रार्थी की एजेंसी को टर्मिनेट किया गया है साथ ही रिन्युअल कमीशन को भी जप्त किया गया है । प्रार्थी ने अपने स्टेटमेंट ऑफ क्लेम में अंकित किया है कि प्रार्थी को मिथ्या आधार पर आरेापित किया जाकर विधि प्रतिकूल जांच कार्यवाही की गयी है जबकि प्रस्तुत जांच रिपोर्ट से ऐसा प्रतीत नही होता है कि प्रार्थी पर अनुशासनात्मक कार्यवाही के दौरान जो आरोप लगाये गये थे वो मिथ्या आधारों पर हो । प्रार्थी ने स्टेटमेंट ऑफ क्लेम में यह भी अंकित किया है कि प्रार्थी पर लगाये

गये आरोपों के संबंध में बचाव सलाहकार हेतु सहायक की मांग की गयी थी परंतु जांच अधिकारी द्वारा मांग अस्वीकार कर दी गयो । पत्रावली पर उपलब्ध जांच रिपोर्ट से ऐसा प्रतीत नही होता है कि प्रार्थी ने बचाव में सलाहकार की मांग की हो, न ही ऐसा प्रतीत होता है कि प्राथी की उक्त मांग को अप्रार्थी द्वारा ठुकरा दिया गया हो । प्रार्थी ने स्टेटमेंट ऑफ क्लेम में यह भी अंकित किया ह कि जांच कार्यवाही के दौरान दस्तावेज उपलब्ध नही कराये गये जबकि जांच रिपोर्ट के अवलोकन से प्रकट होता है कि प्रार्थी को दस्तावेजो के संबंध में स्पष्ट पश्न पूछा गया है परंतु प्रार्थी ने न तो कोई ऐसा उत्तर दिया है कि उसे दस्तावेज पेश करने है अपितु उसने दस्तावेज पेश करने से इकार किया है । जांच रिपोर्ट से ऐसा भी प्रतीत नही होता कि जांच अधिकारी से दस्तावेज की मांग की हो । जांच रिपोर्ट से प्रकट होता है कि बीमार्थी गलकू देवी के प्रस्ताव के समय उसकी वोटर लिस्ट के अनुसार उसकी आयु 66 वर्ष थी जबकि प्रार्थी का कहना है कि उसने बीमार्था के पेनकार्ड के आधार पर पचपन वर्ष आयु अंकित की थी । इस प्रकार अप्रार्थी का आरोप है कि प्रार्थी ने बीमार्थी गलकू देवी की आयु के सबंध में कोई जांच पडता नही कर 66 वर्षीय महिला का कम आयु का दस्तावेज पेन कार्ड लेकर उसे पचपन वर्ष की दर्शाते हुए प्रार्थी न बीमा का प्रस्ताव अप्रार्थी को भेजा है । जबकि प्रार्थी का कथन है कि उसने पेन कार्ड के आधार पर बीमार्थी की आयु पचपन वर्ष अंकित की थी और पेनकार्ड आयु का प्रमाणक दस्तावेज है जो कि अप्रार्थी की सूची में अंकित है । जांच रिपोर्ट के अनुसार अप्रार्थी निगम के पास प्रार्थी के विरूद्ध की गयी विभागीय जांच के दौरान बीमार्थी की वोटर लिस्ट उनके पास मौजूद थी जिसका बीमा के समय बीमार्थी की आयु 66 वर्ष प्रकट होना अप्रार्थी ने बताया है। इससे यह प्रतीत हाता है कि प्रार्थी द्वारा बीमार्थी गलकू का बीमा करते समय उसकी आयु के संबंध में पेनकार्ड के अलावा अन्य दस्तावेज भी मौजूद थे परंतु प्रार्थी ने बीमार्थी की आयु के संबंध में वोटर लिस्ट को प्रकट न कर कम आयु के अंकन वाले दस्तावेज पैनकार्ड के आधार पर बीमार्थी के बीमा हेतु प्रस्ताव तैयार कर अप्रार्थी को भेजा है जो यह प्रकट करता है कि प्रार्थी ने बीमार्थी की आयु के संबंध में तथ्यों को छिपा कर अधिक आयु की महिला को कम आयु की महिला बताते हुए अप्रार्थी निगम से बीमा करवाने की अनुशंसा की है तथा बीमार्थी की दो पालिसी करवाये जाने के कुछ समय पश्चात् ही एक वर्ष दो माह मं ही उसकी मृत्यु होकर दा क्लेम अप्रार्थी के यहां प्रस्तुत हुए है जिसके आधार पर अप्रार्थी द्वारा प्रार्थी को कारण बताओ नोटिस दिया जाकर विभागीय जांच नियमानुसार कर प्रार्थी को सुनवाई का पूरा मौका दिया जाकर विभागीय जांच की गयी है तथा जांच के दौरान प्रार्था के विरूद्ध कदाचरण की पयाप्त साक्ष्य पायी जाकर उसकी एजेंसी के टर्मिनेशन का आदेश पारित किया गया है ऐसी परिस्थिति में यह नही माना जा सकता कि प्रार्थी के विरूद्ध अप्रार्थीगण द्वारा की गयी जांच निष्पक्ष या विधि सम्मत् न तो अपितु अप्रार्थीगण द्वारा की गयी जांच निष्पक्ष एव विधि सम्मत् होना प्रतीत होती है । परिणमतः प्रार्थी राकेश शर्मा के विरूद्ध अप्रार्थी द्वारा की गयी विभागीय जांच निष्पक्ष एवं वैधानिक होना अभिनिर्धारत को जाती है ।

15. जहां तक विक्टीमाईजेशन का प्रश्न है, प्रार्थी ने अपने सशपथ मुख्य परीक्षण में स्टेटमेंट ऑफ क्लेम के तथ्यों की पुनरावृत्ति करते हुए जिरह में कथन किया है कि उसकी प्रारंभिक नियुक्ति बतौर एजेंट तीन वर्ष के लिए की गयी थी । प्रदर्श डब.1 मे अंकित शर्तो से वह सहमत था । उन पर उसे कोई आपत्ति नही थी । गवाह ने इस सुझाव को स्वीकार किया है कि एल आई सी द्वारा किसी व्यक्ति का बीमा साठ साल से उपर आयु वाले का नही किया जाता । उसे इस बात की जानकारी नही है कि गलकू की दो पालिसियों का क्लेम साठ वर्ष से अधिक आयु पाये जाने के आधार पर निरस्त कर दिया गया हो । गवाह ने इस सुझाव से इंकार किया है कि गलकू की मृत्यु एक दो महीने बाद हो गयी हो। जो पालिसी किसी व्यक्ति की भरकर देते है उसके साथ गोपनीय रिपोर्ट निगम में देते है । यह कहना सही है कि हमारी गोपनीय रिपोर्ट से संतुष्ट होकर पालिसी जारी की जाती है । यह कहना सही है कि गलकू के क्लेम में जो कागज पेश किये थे उनके साथ गलकू का मेडिकल भो पेश किया था । प्रदर्श डब.3 के ए से बी भाग में लिखी बातें उसने सही लिखी थी। प्रदर्श डब.5 जांच कार्यवाही के समय वह उपस्थित था तथा प्रत्येक पृष्ठ पर उसके हस्ताक्षर है। उसने अपने कार्य के दौरान जो बीमा पालिसी बनायी थी उसमें से दस पालिसी के क्लेम निगम में पेश हुए थे । गवाह ने इस सुझाव से इंकार किया है

कि उसकी गलती से सभी क्लेमों का भुगतान निगम को करना पडा हो । गवाह ने इस सुझाव को भी स्वीकार किया है कि जिस व्यक्ति की पालिसी करते है उससे व्यक्तिगत रूप से मिलते है और उसकी पारिवारिक जानकारी आयु व स्वास्थ्य की जानकारी लेकर उनके बताये अनुसार गोपनीय रिपोर्ट भिजवाते है । इस प्रकार गवाह ने जिरह में स्वीकार किया है कि उसकी रिपोर्ट तथा गोपनीय रिपोर्ट से संतुष्ट होने पर ही निगम द्वारा पालिसी जारी की जाती है । गवाह ने यह भी स्वीकार किया है कि उसक द्वारा की गयी पालिसियों में दस पालिसियों बाबत् क्लेम पेश हुए है । बचाव में अप्रार्थीगण की ओर से एन ए डब.1 के रूप में अशोक कुमार परीक्षित हुए है । उसने मुख्य परीक्षण में जवाब स्टेटमेंट ऑफ क्लेम के तथ्यों की पुनरावृत्ति करते हुए मुख्य परीक्षण में कथन किया है कि प्रार्थी को दि.5.10.16 को बीमार्थी गलकू देवी की पालिसी के संबंध में प्रस्तुत दस्तावेज एवं गोपनीय रिपोर्ट बाबत् स्पष्टीकरण मांगा गया था क्योंकि प्रस्तुत दस्तावेजों को प्रमुख रूप से सही मानते हुए पालिसी जारी की गयी थी । तथ्यों का व्यक्तिगत सत्यापन करना एजंट का कार्य होता है इसी कारण गोपनीय रिपोर्ट बीमा पालिसी किये जाने से पूर्व एजेंट से प्राप्त की जाती है । प्रार्थी द्वारा मृतक गलकू देवी की बीमा पालिसी की अनुशंसा किये जाने से पूर्व उसके स्वास्थ्य एवं विशेष रूप से आयु के संबंध में भौतिक सत्यापन नही किया गया तथा तकनीकी दस्तावेजों की आड लेकर गलकू की आयु बाबत् गलत तथ्यों की अनुशंसा कर उसके हक में पालिसीयां जारी करवायी । अभिकर्ता का उत्तरदायित्व है कि वह बीमार्थी की आयु, आय व स्वास्थ्य के संबंध में व्यक्तिगत सत्यापन कर अपनी गोपनीय रिपोर्ट दे जो निगम एवं बीमार्थी के मध्य एक महत्वपर्ण कडी हाती है । गलकू देवी का क्लेम प्रस्तुत होने पर जांच अधिकारी द्वारा जांच में यह पाया गया कि बीमार्थी गलकू की बीमा प्रस्ताव के समय आयु साठ वर्ष से अधिक थी । जिरह में गवाह ने कथन किया है कि यह बात सही है कि प्रार्थी द्वारा गलकू देवी के बीमा आवेदन के साथ आयु प्रमाण पत्र के लिए पेनकार्ड की कॉपी संलग्न की गयी थी । गवाह ने अजखुद कहा है कि जो पेन कार्ड पेश किया गया था वह बीमा कराने के लिए बनाकर पेश किया था जबकि गलकू की वास्तविक उम्र ज्यादा थी । पेनकार्ड व आवेदन पत्र एक ही माह का होने के आधार पर वह उपरोक्त बातें बता रहा है । गलकू देवी की मृत्यु बीमा कराने के दो साल के अंदर ही हो गयी थी ।

16. इस प्रकार अप्रार्थीगण की आर से प्रस्तुत गवाह ने मौखिक साक्ष्य दी है कि प्रार्थी द्वारा बीमार्थी गलकू देवी की आयु साठ वर्ष होते हुए भी बीमा करवाये जाने वाला माह में उसकी पचपन वर्ष की आयु का पेनकार्ड बनवाकर बीमा हेतु प्रस्ताव दिया गया है । अप्रार्थीगण की ओर से प्रस्तुत भारतीय जीवन बीमा निगम एजेंट रेग्यूलेशन 1972 की रेग्यूलेशन 16 में एजेंसी टर्मिनेशन की शर्ते अंकित है । जिसके अनुसार यदि एजेंट द्वारा निगम के हितों के विपरीत कार्य किया जाता है या रेग्यूलेशन 8 में अंकित शर्तो का पालन नही कर पाता है तो रेग्यूलेशन 16 के परंतुक के अनुसार एजेंट को शो कॉज नोटिस का पर्याप्त अवसर दिये जाने के पश्चात् उसकी एजेंसी रद्द की जा सकती है । हस्तगत प्रकरण में निगम और बोमा धारी के बीच प्रार्थी एक महत्वपूर्ण कडी है जिसके सत्यापन रिपोर्ट के आधार पर रिपोर्ट को सत्य मानकर निगम द्वारा ग्राहकों का बीमा किया जाता है । इस प्रकरण में गलकू देवी के अलावा प्रार्थी द्वारा किये गये अन्य बीमे भी मृत्यु दावों के रूप में निगम के समक्ष पेश हुए है जिसमें या तो निगम को भुगतान करना पडा है या भुगतान नही करने के कारण निगम की छवि खराब हुई है । प्रार्थी का जो कर्त रहा है वह निःसंदह निगम की छवि धूमिल करने वाला, निगम और एजेंट के संबंधों को अविश्वास में बदलने वाला रहा है। ऐसी परिस्थिति में प्रार्थी के उपर निगम द्वारा लगाये गये आरोपों को दृष्टिगत रखते हुए यह न्यायालय प्रार्थी के विरूद्ध अप्रार्थीगण द्वारा पारित दंडादेश को आरोपों के समतुल्य होना पाता है । प्रार्थी के विरूद्ध पारित दंडादेश आत्मा को झकझोर देने वाला प्रतीत नही होता है । अतः उक्त तमाम परिस्थितियों में प्रार्थी का स्टेटमेंट ऑफ क्लेम स्वीकार किये जाने योग्य नही पाया जाता है और उक्तानुसार ही उक्त विवाद का अधिनिर्णय दिये जाने योग्य है ।

—: आदेश :—

अतः प्रार्थी का स्टेटमेंट ऑफ क्लम विरूद्ध अप्रार्थीगण अस्वीकार कर खारिज किये जाते हुए उक्त निर्देशित विवाद का अधिनिर्णय इस प्रकार से पारित किया जाता है कि प्रार्थी राकेश शर्मा धारा 2 एस औद्योगिक विवाद अधिनियम 1947 की परिभाषा के अनुसार कर्मकार है तथा अप्रार्थी सीनियर डिवीजनल मैनेजर, भारतीय जीवन बीमा निगम, डिवीजनल ऑफिस अजमेर के प्रबंधन द्वारा प्रार्थी राकेश शर्मा की एजेंसी टर्मिनेट किया जाना न्यायोचित एवं विधि संगत है तथा प्रार्थी किसी प्रकार के अनुतोष का हकदार नही है । खर्चा पक्षकारान् अपना–अपना वहन करेंगे ।

17. अधिनिर्णय लिखाया जाकर आज दिनांक 21.6.2022 को खुले न्यायालय में हस्ताक्षर कर सुनाया गया। अवार्ड की प्रति नियमानुसार केंद्र सरकार को वास्ते गजट में प्रकाशन प्रेषित की जावे ।

रामेश्वर प्रसाद चौधरी, न्यायाधीश

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1299.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबन्धक, एसोसिएटेड सीमेंट कंपनी, बूँदी (राजस्थान) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री महावीर प्रसाद सैनी सहित कुल २२ श्रमिकगढ़ के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ सं. केंद्रीय-34/1997 सीआईएस- 31/2014) को प्रकाशित करती है।

[सं. L-29011/16/97-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1299.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (Central)-34/1997) CIS-31/2014).) of the Industrial Tribunal/Labour Court, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Manager, Associated Cement Company, Bundi (Rajasthan) and Shri Mahaveer Prasad Saini and 22 Others.

[No. L-29011/16/97-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी– श्री महेश पुनेठा, आर.जे.एस. (जिला जज संवर्ग)

निर्देश प्रकरण कमांकःऔ.न्या. (केन्द्रीय)–34 / 1997(सीआईएस–31 / 2014)

(सीएनआर–आरजेकेटी060000491997)

दिनांक स्थापितः 21 / 11 / 1997

प्रसंगः भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क.

एल–29011 / 16 / 97–आईआर (विविध) दि. 30 / 09 / 97

निर्देश / विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क)

औद्योगिक विवाद अधिनियम,1947

मध्य

महावीर प्रसाद सैनी सहित कुल 22 श्रमिकगण

––प्रार्थीगण श्रमिक

एवं

प्रबन्धक, एसोसिएटेड सीमेन्ट कंपनी, लाखेरी सीमेन्ट वर्क्स,
पोस्ट लाखेरी, जिला बूँदी।

––अप्रार्थी नियोजक

उपस्थित

प्रार्थीगण श्रमिक की ओर से प्रतिनिधिः– श्री पुरूषोत्तम दाधीच

अप्रार्थी नियोजक की ओर से प्रतिनिधिः– श्री शरद सिंह एवं

श्री अनुराग अग्रवाल

::अधिनिर्णय:: दि.: 02/09/2022

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक **आदेश दिनांक 30/07/97** के जरिये निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे आगे ''अधिनियम'' से सम्बोधित किया जावेगा) की धारा 10(1)घ) एवं उपधारा 2(क)के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया हैः–

''क्या प्रबन्धन मैसर्स एसोसियेटेड सीमेन्ट कंपनी लाखेरी सीमेन्ट, वर्क्स पो. लाखेरी जिला बूँदी द्वारा उनकी कोटनी, केमली लाइमस्टोन खान पर ठेकेदारों के माध्यम से नियुक्त कर्मकार सर्व श्री महावीर पुत्र औंकारलाल सैनी, प्रहलाद सैनी पुत्र रामकुंवार, रामकिशन योगी पुत्र बद्रीलाल योगी, हनुमान प्रसाद पुत्र श्री उंकारलाल सेनी, शान्तीलाल पत्र गोकुल सेनी, शंकरलाल पुत्र गोपाल सेनी, राजाराम कुमरावत पुत्र दुशडाजी, हजारीलाल सेनी पुत्र गोपाल लाल सेनी, सत्यनारायण पुत्र कन्हैयालाल, राधेश्याम सेनी पुत्र कस्तूरा जी, धनपाल पुत्र किशना जी सेनी, मोहनलाल सेनी पुत्र तेजमल जी, रेवराज पुत्र चौथमल, पप्पू पुत्र चौथमल, रामरतन पुत्र मोतीलाल, जगदीश पुत्र तेजमल, रामू पुत्र किशना जी, श्योजी पुत्र बद्रीलाल, सत्यनारायण पुत्र गोपाल, रामफूल पुत्र नैन्नगा जी, देवकरण पुत्र श्री रामचन्द्र जी सेनी, रामेश्वर पुत्र बद्रीलाल योगी की सेवाएं दिनांक 1/2/96 से समाप्त करने की कार्यवाही वैध एवं उचित है? यदि नहीं तो संबंधित कर्मकार किस अनुरोध के हकदार हैं?''

2– उक्त विवाद, न्यायाधिकरण में रेफर होने पर पंजीबद्ध कर पक्षकारों को उपस्थिति बाबत नोटिस जारी किए गए। हस्तगत निर्देश/रेफ्रेन्स, प्रार्थीगण श्रमिक की अप्रार्थी नियोजक प्रबन्धक, मैसर्स एसोसियेटेड सीमेन्ट कंपनी, लाखेरी सीमेन्ट वर्क्स, पो. लाखेरी, जिला बूँदी द्वारा दिनांक 01/02/96 से की गयी सेवा समाप्ति की कार्यवाही की उचितता एवं वैधता के प्रश्न के विनिश्चयार्थ इस न्यायाधिकरण को प्राप्त हुआ जिसके सम्बन्ध में उभयपक्ष की ओर से अपने–अपने अभ्यावेदन प्रस्तुत किये गये।

3–पत्रावली आज साक्ष्य प्रार्थीगण श्रमिक में नियत थी, किन्तु प्रार्थी श्रमिक सत्यनारायण सैनी एवं अन्य श्रमिकगण मय अधिकृत प्रतिनिधि श्री पुरूषोत्तम दाधीच तथा अप्रार्थी नियोजक की ओर से श्री शरद सिंह मुख्य प्रबन्धक(एच.आर.) मय अधिकृत प्रतिनिधि श्री अनुराग अग्रवाल ने न्यायाधिकरण में उपस्थित होकर संयुक्त रूप से एक राजीनामा प्रस्तुत कर प्रकट किया कि उभयपक्ष के मध्य लोक अदालत की भावना से राजीनामा हो गया है जिसके तहत स्टेटमेंट ऑफ क्लेम में वर्णित प्रत्येक श्रमिक को 20,830/–रू.(अक्षरे बीस हजार आठ सौ तीस रूपये) की राशि जर्ये चैक प्रदान कर दी गयी है और प्रार्थीगण श्रमिक की अब अप्रार्थी कंपनी की ओर कोई राशि बकाया नहीं है और ना ही कोई विवाद शेष है, अतः राजीनामे के फलस्वरूप प्रकरण का अन्तिम निस्तारण कर दिया जावे।

चूँकि पक्षकारान के मध्य लोक अदालत की भावना से प्रकरण में उक्त प्रकार से राजीनामा हो गया है और वे अब कोई कार्यवाही नहीं चाहते हैं, अतः सम्पन्न हुए राजीनामे उपरान्त अब कोई विवाद शेष नहीं रहने से प्रकरण ''विवाद रहित'' हो जाता है तथा निर्देश/रेफ्रेन्स भी इसी अनुरूप उत्तरित होने योग्य है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक

30/07/1977 के जरिये सम्प्रेषित निर्देश/रेफेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि पक्षकारान के मध्य लोक अदालत की भावना से प्रकरण में राजीनामा हो गया है और अब वह कोई कार्यवाही नहीं चाहते हैं, अतः सम्पन्न हुए राजीनामे के उपरान्त कोई विवाद शेष नहीं रहने से प्रकरण "विवाद रहित" हो जाता है।

अधिनिर्णय आज दिनांक 02/09/2022 को खुले न्यायाधिकरण में सुनाया जाकर हस्ताक्षरित किया गया जिसे नियमानुसार समुचित सरकार को प्रकाशनार्थ भिजवाया जावे।

महेश पुनेठा, न्यायाधीश

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1300.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स विजय स्टोन इंडिया, कोटा (राजस्थान) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राजेंद्र पुत्र प्रभु लाल यादव, कोटा (राजस्थान) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ सं. केंद्रीय-2/1999 (सीआईएस- 104/2014) को प्रकाशित करती है।

[सं. L-29012/132/98-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1300.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. ((Central)-2/1999) (CIS)-104/2014).) of the Industrial Tribunal/Labour Court, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Vijay Stone India, Kota (Rajasthan) and Shri Rajendra S/o Shri Prabhu Lal Yadav, Kota (Rajasthan).

[No. L-29012/132/98-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी— श्री महेश पुनेठा, आर.जे.एस. (जिला जज संवर्ग)

निर्देश प्रकरण कमांकःऔ.न्या.(केन्द्रीय)—2/1999(सीआईएस—104/2014)

(सीएनआर—आरजेकेटी060001971999)

दिनांक स्थापितः 02/02/1999

प्रसंगः भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्र.

एल—29012/132/98/आईआर(एम)दि.18/01/1999

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क)

औद्योगिक विवाद अधिनियम,1947

मध्य

राजेन्द्र पुत्र प्रभूलाल लाल यादव,

निवासी ग्राम कसार तहसील लाडपुरा, जिला कोटा। ...प्रार्थी

एवं

1—मै. विजय स्टोन इंडिया जर्ये प्रोपराइटर सेठ डालचन्द यादव (दौराने विचारण मृत्यु)

1/1—शांति बाई पत्नी डालचन्द यादव

1/2–विजय कुमार पुत्र डालचन्द यादव

1/3–लक्ष्मी बाई पुत्री डालचन्द यादव

1/4–वीना पुत्री डालचन्द यादव

1/5–रानी बाई पुत्री डालचन्द यादव

(अप्रार्थी 1/1 लगायत 1/5, प्रोपराईटर मृतक डालचन्द यादव के कायममुकामान)

निवासी गुमानपुरा थाने के पास, कोटा। ....अप्रार्थीगण

उपस्थित

प्रार्थी की ओर से :– श्री राजेन्द्र प्रार्थी स्वयं

अप्रार्थी की ओर से प्रतिनिधिः– श्री के.के. सनाढ्य

:अधिनिर्णयः **दि.:12/10/2022**

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक **आदेश दिनांक 18/01/1999** के जरिये निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त ''अधिनियम'' से सम्बोधित किया जावेगा) की धारा 10(1)घ) एवं उपधारा 2(क) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया हैः–

"Weather Shri Rajender S/o Shri Prabhu lal Yadav Kariga was in the employment of the management of M/s Vijay Stone (India) Kota from 16/01/1991 and his discontinuation of services from 30/11/1997 by the said management is justified? If fo, whether the workmen is entitled to for break period? What other relief the workman is entited to and from which date?"

2– उक्त विवाद, न्यायाधिकरण में रेफर होने पर पंजीबद्ध कर पक्षकारों को उपस्थिति बाबत नोटिस जारी किए गए। नोटिस की पालना में प्रार्थी श्रमिक द्वारा उपस्थित होकर स्टेटमेन्ट ऑफ क्लेम न्यायाधिकरण के समक्ष प्रस्तुत कर संक्षिप्तः यह कथन किया गया है कि प्रार्थी की नियुक्ति अप्रार्थी के यहां 16 जनवरी 1991 को करीगर के पद पर हुई तथा उसका मुख्य कार्य खान में पत्थर काटने का था जिसे वह ईमानदारी व नेक नियती से करता था। प्रार्थी की मजदूरी की दर 35/– रुपए प्रति सैकड़ा यानी 100 फुट फर्शी नीयत की गई थी जिसे प्रतिवर्श 5 प्रतिषत के हिसाब से बढ़ाना तय हुआ था। प्रार्थी नियुक्ति तिथि से अप्रार्थी के अधीन कार्य करता आ रहा था, किन्तु दिनांक 30/11/97 को बिना नोटिस अथवा नोटिस वेतन दिये सेवा से निश्कासित कर दिया गया तथा अप्रार्थी के मुंषी व भाईयों ने प्रार्थी के साथ दुर्व्यवहार व मारपीट की कोषिष भी की। अन्त में प्रार्थना की गयी है कि उसे अप्रार्थी के यहॉ न्यूनतम वेतन दर के डिफरेन्स सहित सेवा में पुनर्स्थापित करवाया जावे व पी.एफ. एवं ग्रेच्युटी की राशि भी दिलवायी जावे।

3– अप्रार्थी नियोजक की ओर से उक्त क्लेम का जवाब प्रस्तुत कर यह प्रतिवाद किया गया है कि अप्रार्थी ने प्रार्थी को 16 जनवरी 1991 को कारीगर के पद पर कोइ नियुक्ति नहीं दी। वर्ष 1994 से पूर्व अप्रार्थी के नाम कोई खनन पट्टा नहीं था एवं ना ही मैसर्स विजय स्टोन कंपनी कोई खनन कार्य करती थी। अप्रार्थी ने प्रथम बार दिनांक 07/09/1995 को खनन पट्टा एग्रीमेंट कर खनन कार्य प्रारंभ किया था तब 35/– रुपए प्रति सैकड़ा पर प्रार्थी को फर्शी कटाई का ठेका दिया था। प्रार्थी व अप्रार्थी के मध्य कभी नियोजक एवं श्रमिक का संबंध नहीं रहा है प्रार्थी ठेके के हिसाब से कार्य करता था। अप्रार्थी द्वारा प्रार्थी को 30/11/1997 को कभी भी सेवा से अवैध प्रकार से मुक्त नहीं किया बल्कि वह स्वेच्छा से अन्यत्र कार्य करने चला गया। प्रार्थी ने अप्रार्थी से 18,000/– रुपए एडवांस लिए थे जिनकी मांग अप्रार्थी ने प्रार्थी से अन्यत्र कार्य पर जाते समय की थी। इसके अतिरिक्त अप्रार्थी द्वारा प्रार्थी के अनुबंध की कोई राषि बकाया नहीं रखी है।

4– साक्ष्य में स्वयं प्रार्थी श्रमिक राजेन्द्र तथा अप्रार्थी पक्ष की ओर से डालचन्द यादव व विजय यादव के शपथ–पत्र प्रस्तुत हुए जिनसे उभयपक्ष के प्रतिनिधिगण द्वारा परस्पर जिरह की गयी। उभयपक्ष की ओर से प्रलेखीय साक्ष्य भी प्रस्तुत की गयी जिसका यथासमय उल्लेख किया जावेगा।

5– उभयपक्ष के प्रतिनिधिगण की बहस सुनी गयी जो बहस मुख्यतः उनके द्वारा प्रस्तुत अपने–अपने

अभ्यावेदनों के अनुरूप ही रही है। पत्रावली पर उपलब्ध साक्ष्य व सामग्री की ध्यानपूर्वक परिशीलन किया गया।

6– हस्तगत प्रकरण में मुख्य रूप से यही देखना है कि क्या प्रार्थी श्रमिक उसके द्वारा बतलायी गयी नियोजनावधि में अप्रार्थी मै. विजय स्टोन(इण्डिया) कोटा नामक खान संस्थान में कार्य किया है और उसके तथा अप्रार्थी मै. विजय स्टोन के मध्य ''कर्मकार/श्रमिक तथा नियोजक'' के सम्बन्ध स्थापित रहे हैं? प्रार्थी ने साक्ष्य में प्रस्तुत शपथ पत्र में क्लेम में वर्णित तथ्यों की पुनरावृत्ति की है। प्रार्थी का मुख्य रूप से यह कथन रहा है कि उसकी नियुक्ति अप्रार्थी के यहां सर्वप्रथम 16 जनवरी 1991 में कारीगर के पद पर की गई थी तथा प्रार्थी का कार्य खान के पत्थर कटाने का था, प्रार्थी ईमानदारी पूर्वक अपना काम करता रहा लेकिन अप्रार्थी द्वारा उसे दिनांक 30/11/1997 को अवैध एवं गैरकानूनी रूप से सेवा से पृथक कर दिया गया। जिरह में प्रार्थी ने यह कथन किया है कि यह कहना गलत है कि सन 1995 से पहले डालचन्द के पास खान ना रही हो एवं खान पर कल्लू, गणे, इन्द्र आदि मुंशियों ने काम न लिया हो। अंतिम महीने का पैसा प्रतिपक्षी की ओर बकाया है उक्त पैसा प्रतिपक्षी से मांगने पर ही नौकरी से निकाल दिया था। पहले भी प्रतिपक्षी ने दो–तीन बार नौकरी से निकाला था मगर 15–20 दिन में वापस बुला लेते थे। उसने दादागिरी के संबंध में थाने में रिपोर्ट नहीं करवायी थी। यह कहना गलत है कि प्रतिपक्षी के उसकी ओर 18,000/–रू. बाकी रहे हों और उनके द्वारा उक्त रूपये मांगने पर वह स्वयं नौकरी छोड़कर चला गया हो।

अप्रार्थी की ओर से प्रार्थी के कथनों का खण्डन करते हुए जवाब प्रस्तुत किया गया है और साक्ष्य में डालचन्द एवं विजय यादव के शपथ प्रस्तुत किए गए है। अप्रार्थी डालचन्द ने अपने शपथ पत्र में स्पष्ट रूप से तथ्य बताया है कि प्रार्थी ने अप्रार्थी के यहां 07/09/95 से पूर्व कभी कोई कार्य नहीं किया। अप्रार्थी ने प्रथम बार दिनांक 7/9/95 को खनन पट्टा एग्रीमेन्ट पर लिया था व कार्य प्रारंभ किया था और जो पत्थर कटाई का कार्य प्रार्थी ने वर्ष 1995 में लिया था वह ठेके पर दिया था। अप्रार्थी के मध्य कभी नियोजक एवं श्रमिक का संबंध नहीं रहा और उसने अप्रार्थी के यहां किसी भी कलेण्डर वर्ष में लगातार 240 दिन तक कार्य नहीं किया। जिरह में अप्रार्थी डालचन्द ने यह स्वीकार किया है कि यह कहना गलत है कि प्रार्थी उसके यहां मजदूरी करता हो और उसने 16/01/1991 से काम प्रारंभ किया हो। अप्रार्थी की ओर से प्रस्तुत गवाह विजय यादव ने भी अपने शपथ पत्र में यह कथन किया है कि विजय स्टोन प्रारंभ से ही एक ट्रेडिंग कंपनी रही है इसके नाम पर कभी खान का अलॉटमेंट नहीं हुआ है, ना ही प्रार्थी विजय स्टोन पर नियोजित रहा है। प्रार्थी ने विजय स्टोन पर कार्य नहीं किया है शांति स्टोन पर कार्य किया है। जिरह में गवाह ने यह तथ्य बताया है कि यह कहना गलत है कि उन्होंने विजय स्टोन के नाम से रवन्ने काटे हों। प्रदर्श 10 व 11 भविष्य निधि से प्राप्त कागजात है, लालचंद उनके यहां मुंशी नहीं था, गणेश मुंशी उनके मामाजी नहीं है, प्रदर्श डब्ल्यू 1, 5 व 6 पर उसके चाचा कल्लू के हस्ताक्षर नहीं है।

इस प्रकार पत्रावली पर उपलब्ध साक्ष्य के विवेचन व विश्लेषण ये प्रकट हो रहा है कि प्रार्थी द्वारा यह कथन किया गया है कि उसकी नियुक्ति प्रतिपक्षी के यहां दिनांक 16 जनवरी 1991 को कारीगर के पद पर की गई थी, जबकि प्रार्थी के उक्त कथनों का अप्रार्थी की ओर से स्पष्टतः खण्डन किया गया है। प्रार्थी की ओर से अपने उक्त कथन के संबंध में कोई ऐसी साक्ष्य प्रस्तुत नहीं की गई है जिससे उसके उक्त कथनों को बल मिलता हो। विजय स्टोन पर प्रार्थी द्वारा कार्य करने के संबंध में कोई विश्वसनीय दस्तावेज भी प्रस्तुत नहीं किया गया है जो दस्तावेज प्रदर्श डब्ल्यू–1, 2, 3, 4, 5, 6, 7, 8, 9 प्रस्तुत किए गए हैं, उनसे से भी कहीं यह प्रकट नहीं होता है कि प्रार्थी मै. विजय स्टोन पर कार्यरत रहा हो। उक्त दस्तावेज सादे कागजों पर पर्चीनुमा है और उक्त किसी भी दस्तावेज पर अप्रार्थी के हस्ताक्षर या मोहर अंकित नहीं है और उक्त पर्चियों पर जिन व्यक्तियों के हस्ताक्षर हैं उनको प्रार्थी की ओर से साक्ष्य में प्रस्तुत नहीं किया गया है। उक्त पर्चियों से यह भी प्रकट नहीं हो रहा है कि वे किस संबंध में हैं।

प्रार्थी की ओर जो दस्तावेज प्रदर्श डबल्यू.10 व डबल्यू.11 प्रस्तुत किए गए हैं, उनसे भी प्रार्थी के कथनों की पुष्टि नहीं होती है जबकि अप्रार्थी की ओर से प्रस्तुत दस्तावेज प्रदर्श एम.1 जो कि कर्मचारी भविष्य निधि के सहायक लेखाधिकारी द्वारा मै. शांति स्टोन इंडस्ट्रीज को राजेन्द्र कुमार के सेवा विवरण के संबंध में दिनांक 15/01/2004 को प्रेषित किया गया है उसमें निम्न तथ्य अंकित हैं–''आपके पत्र क्रं. दिनांक 2.1.2004 के संदर्भ में लेख है कि कार्यालय रिकॉर्ड के अनुसार सदस्य दि. 1.12.94 से 31.7.96 तक सदस्य रहा है और दिनांक 28.11.96 को श्री राजेन्द्र पुत्र प्रभुलाल का दावा भविष्य निधि निर्धारित कर खाता बंद कर दिया गया है।'' इस पत्र में वर्णित इबारत से यही प्रकट होता है कि इसमें वर्णित अवधि में कदाचित प्रार्थी, मै. शांति स्टोन इण्डस्ट्रीज के यहॉ कार्यरत रहा होगा जिसके भविष्य निधि के खाते की स्थिति में सम्बन्ध में उस फर्म को

कर्मचारी भविष्य निधि संगठन कार्यालय द्वारा सूचित किया गया है जिस फर्म का अप्रार्थी से कभी भी कोई सम्बन्ध स्थापित रहना प्रकट नहीं होता है।

7— निष्कर्षतः प्रार्थी यह सिद्ध करने में असफल रहा है कि उसके द्वारा बतलायी गयी नियोजनावधि में उसने अप्रार्थी मै. विजय स्टोन(इण्डिया) कोटा नामक खान संस्थान में कार्य किया हो और उसके तथा अप्रार्थी मै. विजय स्टोन के मध्य ''कर्मकार/श्रमिक तथा नियोजक'' के सम्बन्ध स्थापित रहे हों। चूँकि जब प्रार्थी, अप्रार्थी के यहॉ बतलायी गयी नियोजनावधि में उसके व अप्रार्थी के मध्य ''कर्मकार/श्रमिक व नियोजक'' के सम्बन्ध स्थापित रहने को ही साबित नहीं कर पाया है तो फिर उसके द्वारा बतलायी गयी नियोजनावधि में निरन्तर 240 दिवस कार्य पूर्ण कर लेने व अप्रार्थी द्वारा अधिनियम की धारा 25—एफ के प्रावधान की पालना किये जाने का कोई प्रश्न ही शेष नहीं रहा है, अर्थात प्रार्थी का मामला छंटनी का भी नहीं रहा है और प्रार्थी अधिनियमान्तर्गत कोई संरक्षण प्राप्त नहीं होने से वह अप्रार्थी से किसी अनुतोष को प्राप्त करने का अधिकारी घोषित होने योग्य नहीं है और रेफ्रेन्स भी इसी अनुरूप उत्तरित होने योग्य है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक 18/01/1999 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थी राजेन्द्र द्वारा अप्रार्थी मै.विजय स्टोन(इण्डिया) कोटा के यहॉ वर्णित की गयी नियोजनावधि में उसके व अप्रार्थी के मध्य ''कर्मकार/श्रमिक व नियोजक'' के सम्बन्ध स्थापित रहने के तथ्य को साबित करने में पूर्णतया विफल रहा है, अतः ऐसी स्थिति में उसे अधिनियमान्तर्गत कोई संरक्षण प्राप्त नहीं होने से वह अप्रार्थी (प्रोप. सेठ डालचन्द यादव की मृत्यु उपरान्त उसके कायममुकामान अप्रार्थी कम 1/1 से 1/5 तक) से किसी अनुतोष को प्राप्त करने के अधिकारी नहीं है।

अधिनिर्णय आज दिनांक 12/10/2022 को खुले न्यायाधिकरण में सुनाया जाकर हस्ताक्षरित किया गया जिसे नियमानुसार समुचित सरकार को प्रकाशनार्थ भिजवाया जावे।

महेश पुनेठा, न्यायाधीश

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1301.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हिंदुस्तान कॉपर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 धनबाद, के पंचाट (संदर्भ सं. 65/2001) को प्रकाशित करती है।

[सं. L-29012/113/2000-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1301.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 65/2001) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Hindustan Copper Limited and their Workman.

[No. L-29012/113/2000-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 65/2001

Employer in relation to the management of Hidustan Copper Ltd. Ghatsila.

AND.

Their workman.

Present: Shri Dinesh Kumar Singh Presiding Officer.

Appearances:

For the Employers :- None.

For the workman. :- None.

State : Jharkhand. Industry:- Copper

Dated 28/03/2022

AWARD

By Order No.L-29012/113/2000/IR (M) dated 27.02.2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Hindustan Copper Ltd., /ICC in terminating the services of Shri Arun Kumar Sharma is justified? If not, to what relief the concerned is entitled to?"

2. The reference is received on 03/04/2001 by this Tribunal in which the workman/union had been advised to submit statement of claim along with relevant document within fifteen days but the union/workman did not appear before the Tribunal. However after receipt of the reference, both parties were noticed but neither the union/workman nor the management appeared before the Tribunal. Now Case is pending since 03/04/2001 and workman/union as well as management is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate

D.K. SINGH, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1302.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हिंदुस्तान कॉपर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 धनबाद, के पंचाट (संदर्भ सं. 89/2001) को प्रकाशित करती है।

[सं. L-29012/3/2001-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1302.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 89/2001) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Hindustan Copper Limited and their Workman.

[No. L-29012/3/2001-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 89/2001

Employer in relation to the management of Hidustan Copper Ltd/Icc, Moubhandar.

AND.

Their workman.

Present: Shri Dinesh Kumar Singh Presiding Officer.

Appearances:

For the Employers :- None.

For the workman. :- None.

State : Jharkhand. Industry:- Copper

Dated 29/03 /2022

AWARD

By Order No.L-29012/3/2001/IR (M) dated 28.03.2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Hindustan Copper Ltd., /ICC terminating the services of Shri Suraj Sahu is justified? If not, to what relief the concerned workman is entitled to?"

2. The reference is received on 16/04/2001 by this Tribunal in which the workman/union had been advised to submit statement of claim along with relevant document within fifteen days but the union/workman did not appear before the Tribunal. However after receipt of the reference, both parties were noticed but neither the union/workman nor the management appeared before the Tribunal. Now Case is pending since 16/04/2001 and workman/union as well as management is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate

D.K. SINGH, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2022

का.आ. 1303.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हिंदुस्तान कॉपर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 धनबाद, के पंचाट (संदर्भ सं. 90/2001) को प्रकाशित करती है।

[सं. L-29012/4/2001-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 5th December, 2022

S.O. 1303.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 90/2001) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Hindustan Copper Limited and their Workman.

[No. L-29012/4/2001-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1,DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 90/2001

Employer in relation to the management of Hidustan Copper Ltd./Icc. Moubhandar.

AND.

Their workman.

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers :- None.

For the workman. :- None.

State : Jharkhand. Industry:- Copper

Dated 28/03 /2022

AWARD

By Order No.L-29012/4/2001/IR (M) dated 28.03.2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Hindustan Copper Ltd., /ICC in terminating the services of Shri Mrinal Bhattachargee is justified? If not, to what relief the concerned workman is entitled to?"

2. The reference is received on 16/04/2001 by this Tribunal in which the workman/union had been advised to submit statement of claim along with relevant document within fifteen days but the union/workman did not appear before the Tribunal. However after receipt of the reference, both parties were noticed but neither the union/workman nor the management appeared before the Tribunal. Now Case is pending since 16/04/2001 and workman/union as well as management is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate

D.K. SINGH, Presiding Officer

नई दिल्ली, 9 दिसम्बर, 2022

का.आ. 1304.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार **औद्योगिक** अधिकरण जबलपुर के पंचाट (संदर्भ सं. 75/2015) को प्रकाशित करती है !

[सं. एल-12011/44/2015-आई आर बी.1]

ए. के. यादव, अवर सचिव

New Delhi, the 9th December, 2022

S.O. 1304.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.75/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/44/2015– IR(B-1)]

A. K. YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT, JABALPUR

NO. CGIT/LC/R/75/2015

Present: P.K.Srivastava H.J.S..(Retd)

The General Secretary
Dainik Vetan Bhogi Bank Karmachari Sangathan
F-1 Tripti Vihar, Opp.Engineering College
Ujjanin(M.P.) ... Workman

Versus

The Chief General manager
State Bank of India,
L.H.O., Hoshangabad Road,
Bhopal(M.P.) ... Management

AWARD

(Passed on 27-9-22.)

As per letter dated 21/8/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/44/2015/IR(B-1) The dispute under reference relates to:

> "**Whether the demand of the Union claiming differences of wages in favour of Shri Bhupesh Raikwar, daily wage employee from 8-2-2001 to 12-1-12 is justified or not ?If so, what relief the daily wager is entitled for? .**"

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defence.

2. The case of the workman Union as stated in his statement of claim is that the workman was employed as a peon on daily basis in the Branch and remained employed for 12 years. He was not regularized rather he was retrenched illegally without any notice or compensation. He was not paid wages for his work as mentioned in Bi Partite Settlement. The action of the Management in not paying wages to him at par with the peon regularly employed with the management is in violation of Bi Partite Settlement and is arbitrary. Accordingly the workman union has prayed that holdiang the workman Bhupesh Raikwar entitled to difference of wages for the period he worked as a daily wager and the Management Bank be held liable to pay the amount.

3. The case of the Management is mainly that firstly the workman Bhupesh Raikwar did not work continuously as daily wager. The Bipartite Settlement are not applicable to persons engaged on temporary/casual/daily basis. They are applicable to permanent employees only. Hence the workman is not entitled to wages paid to the Regular Staff of the Management Bank doing the same job. Accordingly, the Management has requested that the reference be answered against the workman.

4. The workman Union has not examined any witness on oath.

5. The workman Union did not appear at the time of agreement. They did not file any written argument also. I have heard arguments of Shri Ashish Shroti, learned Counsel for the Management and have gone through the record.

6. **The reference itself is the issue for determination , in the case in hand.**

7. The case of the workman is that he was not paid wages according to the Bi Partite Settlements applicable in different time zones. The management has disputed the claim with a case that the Bi Partite Settlements are only for regular employees of the Bank and not for the daily wagers.

8. The management has referred to decisions of Hon'ble the Apex Court in the case of **State of Haryana and Another Vs. Tilak Raj & Others** reported in AIR(2003) SC 2658 wherein following observation has been made:-

> **"A scale of pay is attached to a definite post and in case of a daily wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work is a abstract one.**
>
> **"Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula."**

9. Following observation has been made in another case of **Himanshu Kumar Vidyarthi & Others Vs. State of Bihar & Others** reported in AIR(1997) SC3657, where in it has been observed as under:-

"they are temporary employees working on daily wages. Under this circumstance, the dis-engagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of retrenchment, therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the post, disengagement is not arbitrary."

10 As referred by management , following observation has been made by Hon'ble the Apex Court in the case of **State of Rajasthan & Others Vs. Dayalal & Others** reported in(2011) 2 SCC 429:-

"(1)High Courts in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rule in an open competitive process against sanctioned vacant posts . The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be in violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by a temporary or ad hoc or daily wage employee, under cover of some interim orders of the Court, would not confer upon him any right to be absorbed into service, as such service would be litigious employment. Even temporary , ad hoc or daily wage service for a long number of years let along service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date(that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed to subsequent to the cut off date, to claim or to contend that the scheme should be applied to them by extending the cut off date or seek a direction for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. No can employees in private employment, even if serving full time, seek parity in salary with against the State must arise under a contract or under a statute."

11. IN the light of aforesaid preposition of law declared by Hon'ble the Apex Court, the daily wagers cannot be held to be entitled to the pay and wages equally paid to regular paid employees of the Bank and the issue requires to be decided against the workman.

12. On the basis of the above discussion, following award is passed:-

A. The demand of the Union claiming differences of wages in favour of Shri Bhupesh Raikwar, daily wage employee from 8-2-2001 to 12-1-12 is held not justified.

B. The workman is held entitled to no relief.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 27-9-2022

नई दिल्ली, 9 दिसम्बर, 2022

का.आ. 1305.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ सं. 164/2002) को प्रकाशित करती है !

[सं. एल-12012/175/2002-आई आर बी.1]

ए. के. यादव, अवर सचिव

New Delhi, the 9th December, 2022

S.O. 1305.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.164/2002) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/175/2002– IR(B-1)]

A. K YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT, JABALPUR

NO. CGIT/LC/R/164/2002

Present: P.K.Srivastava H.J.S..(Retd)

Shri Arjun Singh Ahirwar,
Vijay Nagar Colony,
Near Well, H/o Ramcharan,
Chowkidar Lalghati,
Bhopal(M.P.) ... Workman

Versus

The Assistant General Manager,
State Bank of India,
Region-I, Zonal Office,
Hamidia Road,
Bhopal(M.P.)-262001 ... Management

AWARD

(Passed on 17-8-2022.)

As per letter dated 14-11-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/175/2002-IR(B-1). The dispute under reference relates to:

"Whether the action of the management of Assistant General Manager, State Bank of India, Reg.I.Bhopal in terminating the services of Shri Arjun Singh Ahirwar w.e.f. 11/10/1995 is justified? If not what relief the applicant is entitled to?"

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defence.

2. The case of the workman as stated in his statement of claim is that he was working as canteen cook cum server in Officer's Canteen , State Bank of India, Zonal Office, Bhopal. The workman had applied for home loan of Rupees One lakh from second party. Cheque of Rs.65,000/- was given to property broker. Amount of Rs.25,000/- was kept in fixed deposit in name of owner of property Shri Govindram. Charge sheet was issued to workman that he has not purchased property. Shri Tiwari was appointed as Inquiry Officer. Workman submits that Shri J.K.Shrivastava was Defence Assistant. The Defence Assistant deliberately

remained absent in inquiry proceedings. Inquiry is illegally conducted. He was not given proper opportunity for his defence. Thus the workman has prayed that the reference be decided in his favour.

3. The management filed written statement of defense denying the contentions of the workman. The Management submits that since the Defence Assistant remained absent the inquiry report could not submitted. The workman participated in the inquiry and witness of management has been cross-examined.

4. My learned Predecessor vide order dated 15-6-2010 framed the following preliminary issue:-

"Whether the departmental inquiry conducted against the workman is proper & legal or not?"

5. Parties were given opportunity to lead evidence in this respect.

6. Vide his order dated 17-6-2015 my learned Predecessor held preliminary issue in affirmative, holding the departmental inquiry conducted as legal and proper. His this order is part of the award. Following additional issues were framed by my learned Predecessor vide the same order:-

(1) Whether the charges against the workman are proved from the evidence in inquiry proceedings?

(2) Whether the punishment of dismissal imposed against the workman is legal and proper?

(3) If so, what relief the workman is entitled to.?

7. Parties were given opportunity to lead evidence in this respect, and the workman examined himself on these additional issues. He was cross-examined. Management also examined its witness and was also cross-examined.

8. I have heard arguments of Ms. Akansha Soni, learned counsel for the workman and Shri V.K.Tripathi, learned counsel for the Management and have gone through the record.

9. **ADDITIONAL ISSUE NO.1:-**

Learned counsel for the management has submitted that the standard of evidence with respect to proof of Charge in departmental inquiry and criminal trial is different. In departmental inquiry the charge need not be proved beyond doubt. It is required to be proved only up to probability level and has further submitted that the issue whether the charges are proved in the departmental inquiry should be seen in the light of these settled principles. The learned counsel has referred to judgement of Hon'ble the Apex Court in the case of **State Bank of Bikaner & Jaipur V. Nemi Chand Nalwaya** (2011) 4 SCC 584. Para (10) of the judgement is being reproduced as follows:-

The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him.

10. The same principle has been reiterated by Hon'ble the Apex Court in the case of **Pravin Kumar V. Union of India** (2020) 9 SCC 471. Para 33 to 35 of this judgment are being reproduced as follows:-

33. The incident of 28.02.1999 raised serious questions of criminality under the Prevention of Corruption Act, as well as of violation of Service Regulations and administrative misconduct. Thus, in addition to appointment of enquiry officer, the authorities also registered a criminal complaint with the CBI. After investigation, the CBI though did not find adequate material to launch criminal prosecution against the appellant but through its self speaking report dated 07.03.2000, the CBI recommended major disciplinary action against the appellant and a few others.

34. It is beyond debate that criminal proceedings are distinct from civil proceedings. It is both possible and common in disciplinary matters to establish charges against a delinquent official by preponderance of probabilities and consequently terminate his services. But the same set of evidence may not be sufficient to take away his liberty under our criminal law jurisprudence. 6 Such distinction between standards of proof amongst civil and criminal litigation is deliberate, given the differences in stakes, the power imbalance between the parties and the social costs of an erroneous decision. Thus, in a disciplinary enquiry, strict rules of evidence and procedure of a criminal trial are inapplicable, like say, statements made before enquiry officers can be relied upon in certain instances.

35. Thus, the appellant's contention that he should be exonerated in the present proceedings as no criminal chargesheet was filed by the CBI after enquiry, is liable to be discarded. 8 The employer always retains the right to conduct an independent disciplinary proceeding, irrespective of the outcome of a criminal proceeding. Furthermore, the CBI report dated 07.03.2000 does recommend major disciplinary action against the appellant. The said report also buttresses the respondent's case.

11. In another case, **General Manager, State Bank of India Vs. R. Periyasamy**(2015) 3 SCC 101 the same principle has been reiterated in para 11 of the judgment which is being reproduced as follows:-

11. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India Vs. Sardar Bahadur[3], this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt.

12 IN the case of **Deputy General Manager,State Bank of India Vs.Ajai Kumar Srivastava**(2021)2 SCC 612 referred to by learned counsel for the Management, the same principle has been reiterated in para 27 of the judgment which is being reproduced as follows:-

27. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.

13. The charges against the workman are as follows:-

(1)When he was sanctioned a housing loan of Rs.1,00,000/- by the Bank on his application for purchase of house property. He obtained amount of Rs.90,000/- of housing loan on 4-1-1992 after execution of documents on the ground that he was to purchase house property from one Govind Son of Roopkumar and got issued a Bankers Cheque No.970168 of Rs.65,000/- on 4-1-1992 which was duly acknowledged by him. But this amount was never paid to the Govind S/o Roopkumar. The workman did not submit acknowledgement in receipt thereof, rather he deposited the said amount with Bank of Baroda, Hamidia Branch Bhopal in A/c No.13977 opened by fake Govindram s/o Roopkumar and withdrew the amount on different dates posing himself to be Govind Ram S/o Roop Kumar the vendor. He defrauded the Bank which is misconduct in service rules Desai Award.

(2)That he received amount of Rs.25,000/- from the Housing loan sanctioned. Opened an account in the name of said Govind S/o Roopkumar in the State Bank of India, Chola Road, Branch Bhopal on 4-1-1992 and got fraudulently prepared a fixed deposit. Receipt of the said amount is No.795956. He wrongly /knowingly introduced the imposter posing himself to be the vendor Govindram.

14. The Management has proved the inquiry documents as Exhibit M-7. Perusal of these inquiry documents reveals that three witnesses were examined during the inquiry to prove the charge. First witness is A.K.Khana, the then Manager-PBD at Chola Road Brach. He stated during inquiry that he was posted as Branch manager PBD in the said Branch since July-1990. He further states that a housing loan was sanction by the Branch to the workman on 4-1-1992 on his application. The condition was that the workman would get a house purchased out of the housing loan and inform the Bank accordingly as well deposit the title deed/sale deeds in the bank within 30 days. The workman did not inform the Bank, accordingly nor did he produce the

sale deed within 30 days after availing the loan amount. Then this witness sent a letter on 13-2-1992 to the alleged vendor Govind S/o Roop Kumar. The alleged vendor personally informed the witness that he never received any Bankers cheque of Rs.65,000/- from the workman and he did not execute any sale deed in favour of the workman. On inquiry it was found that the amount of Rs.65,000/- released from the house loan sanctioned in the name of Govind S/o Roopkumar by bankers cheque was realized through Bank of Baroda, Hamidia Road Branch. In his cross-examination from the side of the workman, during the inquiry, this witness stated that document PEX-1 & 2 the name of the vendor was written Govind Ram Thadani. He further explained that the Bankers Cheque was issued in the name of Govindram S/o Roopkumar. From the evidence during the inquiry, it came out that the owner Govind Ram Thadani had executed a power of attorney in favour of Govind Ram S/o Ram Kumar authorizing him to negotiate and execute sale deed of the said house after receiving sale consideration. It also comes out from the inquiry that the said bankers cheque was deposited in the account of Govindram S/o Roop Kumar Account No.13977 with Hamidia Road Branch of Bank of Baroda. It is also clear from the statement of another witness Ramdas during the inquiry that he identified Govind Ram S/o Roopkumar and introduced himself with the bank in opening the said account in different bankers cheque of Rs.65, 000/- of home loan is said to be deposited. This witness further states during the inquiry that he had introduced Govindram S/o Roopkumar because he was recommended by his friend Rajkumar, a police employee who died later on. His this statement is further supported by PEX-19 where his name and signature finds mention in the Account opening form of Govind Ram S/o Ramkumar as introducer. This witness does nowhere state that the applicant workman was present at the time when the Account was opened or when he introduced Govindram S/o Ramkumar in opening Account. The third witness examined during the Inquiry is Govind Ram S/o Roopkumar. He stated that he has received Rs.6000/- as advance payment for sake of house from the workman in the year 1991. He had agreed to execute the sale deed after receiving the remaining sale consideration to be paid within two months. The workman could not pay him the remaining sale consideration for three or four months, thereafter, he executed the sale deed of the said house on 13-11-1991 to Smt. Poonam Hemnani. He further states that he never opened any Account in Hamidia Road Branch of Bank of Baroda. He never got any bankers cheque of Rs.65,000/-. He also never got prepared any fixed deposit receipt with the State Bank of India Chola Road Branch for Rs.25,000/-. He denies his signature on the application for preparing fixed deposit receipt, PEX-14. IN cross-examination, he admits that he was power of attorney holder for the real owner Govind Ram Thadani, PEX-14, the fixed deposit receipt application form bears the name of the workman as Introducer.

15. Now if we consider this evidence and documents in the light of settled preposition of law regarding proof of authority in the departmental inquiry as stated earlier, it is established that the workman had no role in opening of Account by Govindram S/o Roopkumar with Bank of Baroda, Hamidia Branch, Bhopal. There is nothing on record during the inquiry to indicate that the workman was either present at the time when the said account was opened or had introduced the applicant Govindram S/o Roopkumar for opening the account, rather he was introduced by PW-2 Ramdas, examined during the inquiry. As for the charge that the workman withdrew the said amount from the bank of Baroda Branch in different dates, there is nothing on record in enquiry papers to show that it was the workman who withdrew the said amount on different dates. **Hence the finding of the Inquiry Officer with respect to the proof of charge is nothing but perverse because it is based on no evidence at all.**

16. As regards the second charge, perusal of PEX-14 filed during the inquiry shows that the workman introduced the alleged Govindram S/o Roopkumar in the application for fixed deposit receipt of Rs.25,000/-. This Govindram S/o Ramkumar has denied his signature on this application form but since this fact that the workman introduced for fixed deposit receipt of Rs.25,000/- of Govindram S/o Roopkumar it can be said that there is some evidence to show the complexity of the workman with respect to this charge.

17. In the light of the above discussion and findings of inquiry officer, holding Charge No.1 proved is held perverse. Charge No.1 is held not proved. As regards Charge No.2, the finding of the inquiry officer holding this charge proved is held justified in law and finding with respect of this charge is affirmed. **Additional Issue No.1 is answered accordingly.**

18. **ADDITIONAL ISSUE NO.2:-**

Till now, out of the two charges only one charge which is Charge No.2 is held proved and Charge No.1 has held not proved. The Management has awarded punishment of termination from service for the misconduct. It has been submitted from the side of the workman by his learned counsel that this punishment is dis-proportionate to the proved charge and requires interference by this Tribunal.

19. The learned counsel for the management has defended the impugned punishment with an argument that the charges are of misconduct involving moral turpitude affecting the core integrity of the employee for which punishment of dismissal/removal from service is provided in service rules. Hence the punishment cannot be said to be excessive or disproportionate to the charge proved. Learned Counsel has further submitted that this Tribunal is not an Appellate authority and no interference is required only on the ground that the other view is also possible with respect to punishment. Learned Counsel has referred to decision of Hon'ble the Apex

Court in the case of **State of Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya**(supra) specially para 7 and 8 of this judgment which are being reproduced as follows:-

> 7. **It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide B. C. Chaturvedi vs. Union of India - 1995 (6) SCC 749, Union of India vs. G. Gunayuthan - 1997 (7) SCC 463, and Bank of India vs. Degala Suryanarayana - 1999 (5) SCC 762, High Court of Judicature at Bombay vs. Shahsi Kant S Patil - 2001 (1) SCC 416).**
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> 8. **When a court is considering whether punishment of `termination from service' imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from "dormant" to "operative" category (contrary to instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be account holder was an imposter, the bank cannot be found fault with if it says that it has lost confidence in the employee concerned. A Bank is justified in contending that not only employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.**

20. Para 37 of the judgment in the case **of Pravin Kumar vs. Union of India (Supra)** referred to by learned counsel for the management is also being reproduced as follows:-

> **37. Applying these guidelines to the facts of the case in hand, it is clear that the punishment of dismissal from service is far from disproportionate to the charges of corruption, fabrication and intimidation which have unanimously been proven against the appellant. Taking any other view would be an anathema to service jurisprudence. If we were to hold that systematic corruption and its blatant coverup are inadequate to attract dismissal from service, then the purpose behind having such major penalties, which are explicitly provided for under Article 311 of the Constitution, would be obliterated.**

21. Para 10 of the case of **State Bank of India vs. Periyasamy(supra)** referred to by learned counsel for the Management is being reproduced as follows:-

> **10. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India Vs. Sardar Bahadur[3], this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. This view was upheld by this Court in State Bank of India & ors. Vs. Ramesh Dinkar Punde[4]. More recently, in State Bank of India Vs. Narendra Kumar Pandey[5], this Court observed that a disciplinary authority is expected to prove the charges leveled against a bank-officer on the preponderance of probabilities and not on proof beyond reasonable doubt. Further, in Union Bank of India Vs. Vishwa Mohan[6], this Court was confronted with a case which was similar to the present one. The respondent therein was also a bank employee, who was unable to demonstrate to the Court as to how prejudice had been caused to him due to non-supply of the inquiry authorities report/findings in his case. This Court held that in the banking**

business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this were not to be observed, the Court held that the confidence of the public/depositors would be impaired. Thus in that case the Court set-aside the order of the High Court and upheld the dismissal of the bank employee, rejecting the ground that any prejudice had been caused to him on account of non-furnishing of the inquiry report/findings to him.

While dealing with the question as to whether a person with doubtful integrity ought to be allowed to work in a Government Department, this Court in Commissioner of Police New Delhi & Anr. Vs. Mehar Singh[7], held that while the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a departmental proceeding is merely the preponderance of probabilities. The Court observed that quite often criminal cases end in acquittal because witnesses turn hostile and therefore, such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. The long standing view on this subject was settled by this Court in R.P. Kapur Vs. Union of India[8], whereby it was held that a departmental proceeding can proceed even though a person is acquitted when the acquittal is other than honourable. We are in agreement with this view.

In administrative law, it is a settled principle that the onus of proof rests upon the party alleging the invalidity of an order[9]. In other words, there is a presumption that the decision or executive order is properly and validly made, a presumption expressed in the maxim omnia praesumuntur rite esse acta which means 'all things are presumed to be done in due form[10].'

22. Learned Counsel has referred to another judgement of Hon'ble the Apex Court in the case of **U.P. SRTC Vs. Suresh Chand sharma**, (2010) 6 SCC 555 but the charge against the workman in referred case was not of misappropriation or embezzlement, hence this judgement does not apply in the present case. Learned counsel has further referred to some decision in para 26 of his written argument but without complete citations in which it has been held that in cases of corruption/mis-appropriation, dismissal is the only punishment.

23. Now coming to the facts and evidence as well as findings recorded earlier in the case in hand, in the light of settled preposition of law, on this issue as referred to above, the charge of mis-appropriation of amount has been held not proved. It has also been held that there is some evidence regarding complicity of the workman with respect to Charge No.2 and this charge has been held proved. The fact still remains that the fixed deposit receipt was never liquidated. Keeping this fact in view the maximum punishment of dismissal without considering the other option is nothing but excessive to the charge. Holding the punishment shockingly disproportionate to the charge proved, **Issue No.2 is decided accordingly.**

24. **ADDITIONAL ISSUE NO.3:-**

Since the charge no.2 is held proved, the workman cannot escape the punishment. It will be in the interest of justice if the punishment is left on the discretion of the Disciplinary Authority with a direction that he will pass a fresh order regarding punishment with regard to charge No.2 which may be any punishment excluding dismissal, termination, discharge and removal of the workman, giving the opportunity of hearing to the workman. **Issue No.3 is decided accordingly.**

25. On the basis of the above discussion, following award is passed:-

A.The action of the Assistant General Manager, State Bank of India, Reg.I.Bhopal in terminating the services of Shri Arjun Singh Ahirwar w.e.f. 11/10/1995 is held to be unjustified in law.

B.The Disciplinary authority is at liberty to pass a fresh punishment order except dismissal/termination/discharge /removal from service of the workman with respect to the proved charge no.2 after giving opportunity of hearing to the workman. Since the matter is old, this exercise may be done within three months from the sdate of receipt of award after publication in official gazette . He may also take decision regarding back wages and consequential service benefits.

26. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

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